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**Report on modalities for the revision of the United Nations  
Guidelines for Consumer Protection [Advance draft]**

This report presents the main results of the consultations on UNGCP, as well as a proposal for the modalities for a revision of the UNGCP. The UNCTAD secretariat proposed two options for the revision of UNGCP: (i) a thematic approach, consisting of the revision of each individual guideline within UNGCP; and/or (ii) an integrated approach, consisting of the adoption of broad areas that would regulate common features of consumer protection, underpinned with specific sector issues where necessary. The report draws on the work being carried out in other international institutions and fora, and takes into account possible impact of such ongoing work for the revision of the UNGCP. The report also reviews the issue of international cooperation raised during the consultations to propose possible options for revision, in particular in the fields of e-commerce, financial services, other issues and the implementation of UNGCP.

The report will be feed the discussion on the Third Ad Hoc Expert Group Meeting on Consumer Protection to be held in Geneva on 22 and 23 January 2013.

Please note that this Report is currently available in English only, future translations along with all other relevant documentation, can be accessed at:  
<http://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx>

## ACKNOWLEDGEMENTS

This first report was prepared by the UNCTAD secretariat in close collaboration with the Chair of the Ad-Hoc Expert meeting on the interface between Competition and Consumer Policies and the Chairs of the four Working Groups on the United Nations Guidelines on Consumer Protection. It was prepared on the basis of a consultative process emanating from the Second Ad Hoc Expert Group Meeting on Consumer Protection, held in July 2013.

The UNCTAD secretariat would like to acknowledge the valuable inputs and guidance in the drafting of this report provided by the experts chairing the four Working Groups as well as the Working Groups coordinator. These experts are: Nathalie Homobono and Nicole Nespoulous (DGCCRF-France), Teresa Moreira and Fernanda Dias (DGC-Portugal), Juliana Pereira and Ana Cândida Muniz (SENACON-Brazil), Rainer Metz, Beatrix Lidner and Matthias Brigulla (FMJCP-Germany), Mfa Obiang and Anne-Marie Kassa Ndongo (DGCC-Gabon), and Sothi Rachagan (MyCC-Malaysia). UNCTAD would also like to acknowledge the inputs from experts from other international organizations and members of civil society organizations and academia to the present report. These experts include: Peter Avery and Brigitte Acoca (OECD), Amanda Long and Antonino Serra (Consumers International), and Elizabeth Thomas-Raynaud (International Chamber of Commerce). The UNCTAD secretariat also acknowledges the many valuable contributions from national consumer protection experts from Member States that constitute the backbone of the present report, as well as the support from permanent missions in Geneva during the consultative process, including contributions during the conference calls and the regional side meetings held in Bogota, Chang Mai, Geneva, Guadalajara, Panama, Paris, Santo Domingo, Stockholm and Tunis.

UNCTAD extends special appreciation to Nathalie Homobono (DGCCRF-France) for acting as Chairperson of the Second Ad Hoc Expert Group Meeting, held between 11 and 12 July 2013, for her valuable contribution to the discussions and the contents of this report, and for intellectual leadership throughout this process.

This report was prepared by Arnau Izaguerri and Graham Mott, with the valuable contributions of Felix Heitmann, under the overall guidance and supervision of Hassan Qaqaya.

## ABBREVIATIONS

ADICAE	Association of Bank and Insurance Consumers, Spain.
APEC	Asia-Pacific Economic Cooperation
CAG	Citizen Consumer Group, India
CAI	Consumer Association, India
CCP	Committee on Consumer Policy
CONCADECO	Central American Council on Consumer Protection
CI	Consumer International
DGCCRF	Directorate General for Competition Policy, Consumer Affairs and Fraud Control, France
ECOWAS	Economic Community Of West African States
EU	European Union
FMJCP	Federal Ministry of Justice and Consumer Protection, Germany
FIAGC	Iberoamerican Forum of Governmental Consumer Protection Agencies
ICC	International Chamber of Commerce
ICAO	International Civil Aviation Organization
ICPEN	International Consumer Protection Enforcement Network
ITU	International Telecommunications Union
MERCOSUR	South Common Market
MGP	Mumbai Grahak Panchayat Association, India
MyCC	Malaysian Competition Commission
NCOS	Nippon Consumers for Better Standards Association, Japan
SENACON	National Secretariat of Consumer Affairs, Brazil
OAS	Organization of American States
OECD	Organization for Economic Co-operation and Development
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference for Trade and Development
UNGCP	United Nations Guidelines on Consumer Protection
USFTC	United States of America Federal Trade Commission,

## I. Introduction

1. At the First Ad Hoc Expert Meeting on Consumer Protection (2012), it was proposed that UNCTAD should launch consultations on the possible revision of the United Nations Guidelines on Consumer Protection (hereinafter, UNGCP). This was later developed during the Second Ad Hoc Expert Meeting on Consumer Protection (2013), comprised of a combination of member states, observers and outside stakeholders. This first report presents the main results of the consultations, as well as the modalities for a revision of the UNGCP. It draws on the work being carried out in other international institutions and fora, and highlights the issues on international cooperation raised during the consultations to propose possible options for revision.

## II. Modalities for the revision of the UNGCP

### A. Objectives of the revision of UNGCP

2. The revision of UNGCP covers the whole content of the existing UNGCP, as well as some areas not yet covered in the Guidelines (e-commerce, financial services, other issues and implementation), with the objective of better protecting consumers in a changing world and the need for up-to-date consumer protection in areas that are, and increasingly so, an essential part of everyday consumption. The overarching aim of the revision is to achieve an effective protection for consumers at the national, regional and international levels, while striking the right balance between a high level of consumer protection and the competitiveness of businesses. It therefore aims to elevate consumers' confidence in markets and ensure that businesses, not least SMEs, may benefit from a more predictable regulatory environment, characterised by simple and transparent rules, through lower compliance costs and an ability to trade more easily across borders, irrespective of where these enterprises are established.

3. The current revision process provides a valuable opportunity to modernise the UNGCP, in order to simplify and improve the regulatory environment for both businesses and consumers, and improve or extend the level of protection afforded to consumers. This is fully in line with UNCTAD's work on competition law and policy and consumer welfare in a globalized economy. To this end, the legitimate needs formulated in UNGCP are being reviewed both as a whole and individually to identify regulatory, policy or enforcement gaps and shortcomings affecting all of them, as well as issues that are not yet addressed in UNGCP as they stand today.

### B. Background

4. The First Ad Hoc Expert Group Meeting on Consumer Protection held between 12 and 13 July 2012, asked UNCTAD to prepare an Implementation Report on UNGCP. This report (TD/B/C.I/CLP/23)<sup>1</sup> [hereinafter UNCTAD *Implementation Report* of 2013]

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<sup>1</sup> Implementation Report on the United Nations Guidelines on Consumer Protection (1985-2013), TD/B/C.I/CLP/23, UNCTAD, 19 April 2013, available at: [http://unctad.org/meetings/en/SessionalDocuments/ciclpd23\\_en.pdf](http://unctad.org/meetings/en/SessionalDocuments/ciclpd23_en.pdf).

concluded that since 1985, UNGCP have been widely implemented by member States of United Nations. The national contributions to this implementation assessment (over 50) showed that all areas of the current Guidelines remain valid and useful. In addition, new challenges to consumer protection were identified: e-commerce and financial services. Interest was raised concerning additional issues as well as the implementation and monitoring of UNGCP.

5. The Second Ad Hoc Expert Group Meeting on Consumer Protection, held between 11 and 12 July 2013, served to review UNCTAD's Implementation Report. During the discussions, several areas were identified for incorporation into any future revision, particularly those areas where substantive progress has already been made by other organizations, such as the OECD and G20, and where substantial consensus among United Nations member States has already been achieved. This particularly concerns: (i) e-commerce: OECD Guidelines for Consumer Protection in the Context of E-commerce (1999) [currently under revision, due 2016]; and (ii) financial services: OECD G-20 High-level Principles on Financial Consumer Protection (2012). Experts also identified a range of other issues that would merit further discussion before inclusion in any revision: data protection, abusive advertising, energy, cross-border trade, transport, public services, access to knowledge, tourism, collective redress mechanisms, and housing. Finally, many experts also called for an implementation and control mechanism for UNGCP.

6. As a framework to explore these issues, a proposal was accepted to establish four Working Groups. The expert group further agreed that the UNCTAD secretariat would prepare a report on these issues to be submitted to the VII UN Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices Set (hereinafter the UN Set) for inclusion in a possible future revision of UNGCP, in close collaboration with the Chairs of the Working Groups. The chairmanship of each working group is as follows: E-commerce (France), Financial Services (Malaysia), Other Issues (Brazil & Germany) and Implementation of UNGCP (Gabon). The Chairs and the UNCTAD secretariat agreed on a working methodology for each group, and called for the participation of member States as well as international organisations, Consumers International (CI), the International Chamber of Commerce (ICC), academics and other relevant stakeholders. Working Groups have made use of ICT and regional gatherings when consulting on, presenting and publicising their work.

7. In collaboration and accordance with the Chairs of the four Working Groups, the Chair of the Second Ad Hoc Expert Group Meeting (France) and the Working Groups' Coordinator (Portugal), the UNCTAD secretariat prepared questionnaires for each of the Working Groups, which were disseminated in order to solicit the views, concerns, best practices and recommendations from member States and other relevant stakeholders. The responses to these questionnaires form the basis of this report, which outlines findings and trends, and highlights key issues as expressed by the member States and relevant stakeholders.

8. In close collaboration with the Chairs of the four Working Groups, as well as their coordinators, UNCTAD held an informal briefing on 9 July 2014 for the permanent missions in Geneva and interested participants of the Fourteenth Intergovernmental Group of Experts on Competition Law and Policy. Its aim was to report on the work in progress of the UNGCP review. This meeting also served as an opportunity to present the steps that lie ahead in the coming months.

9. Regional consultations have been undertaken on the margins of regional gatherings of consumer protection experts throughout 2013 and 2014, namely in: Bogota, Chang Mai,

Geneva, Guadalajara, Panama, Paris, Santo Domingo, Stockholm and Tunis. The first draft of this report was circulated to member States and other relevant stakeholders on 15 August 2014. Subsequent comments and contributions have been integrated. The present report will be the basis for discussion of the Third Ad Hoc Expert Group Meeting on Consumer Protection of 22 and 23 January in Geneva. The outcome of that meeting will be submitted for consideration to the VII United Nations Conference to Review the Set, being held in July 2015 in Geneva.

### **C. Relationship between the revision and the work of other international institutions and fora**

10. Given the breadth of the areas covered by UNGCP, and the overlaps with the ongoing work in other international institutions such as ECOWAS, ICAO, ITU, OAS, OECD, UNCITRAL, the World Bank, and WTO, as well as proposals from civil society organizations (such as CI and ICC), the impact of any proposed revision in such areas as e-commerce, financial services, other issues or implementation will need to be assessed. In particular, the revision should not prejudice the ongoing consultations on the revision of the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce<sup>2</sup> (hereafter OECD Guidelines) or the OECD/G-20 High Level Principles on financial services.

11. A revised UNGCP will provide policy advice only and will therefore not create a conflict with national laws, as UNGCP are principle-based rather than prescriptive in nature. Member States enjoy full discretion when transposing UNGCP into their national laws, taking into account their specific socio-economic circumstances.

### **D. Possible options for the revision of UNGCP**

12. The secretariat has identified two possible approaches for the UNGCP revision: (i) a thematic approach, consisting of the revision of each individual guideline within UNGCP ; and/or (ii) an integrated approach, consisting of the adoption of broad areas that address common features of consumer protection, underpinned with specific sector issues (i.e. e-commerce, financial services, other issues and implementation) and complemented by thematic revisions, for example, mobile payments, data protection etc. When transposing the proposed revision to a United Nations General Assembly Resolution, the UNCTAD secretariat will carefully take into account the impact of such proposals, including the impact on businesses.

#### **(i) Thematic approach**

13. Under a thematic approach, each of the existing UNGCP would be assessed and, where needed, amended in a UN General Assembly resolution, in order to adapt them to market and technological developments. The gaps specific to individual guidelines would be filled in and particularities to those guidelines would be addressed. This approach, however, would be highly time-consuming and may not be able to achieve the simplifying effects of an integrated approach. Member States would have to negotiate each individual guideline within UNGCP and ensure that issues are addressed consistently throughout the existing text when incorporating new concepts to reflect recent changes in markets and technological developments.

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<sup>2</sup>

[www.oecd.org/sti/consumer/34023811.pdf](http://www.oecd.org/sti/consumer/34023811.pdf).

**(ii) Integrated approach**

14. UNGCP, in current form, are mainly based on a thematic approach, intended to provide specific solutions to particular problems. This approach, however, has given rise to gaps in coverage as markets and technological developments bring new challenges to light. For example, e-commerce, financial services, and implementation have come up, particularly in cross-border situations.

15. There are a number of issues not yet covered in UNGCP that were identified during consultations and their inclusion could be channelled under thematic and specific chapters (for example, e-commerce, financial services, collective redress mechanisms, tourism, or implementation). Horizontal adaptation of the rest of UNGCP would be proposed when needed to accommodate these and other issues. This approach would simplify and rationalise the revision in line with better and simpler policy principles. The issues covered by these consultations could be summarised in the following table:

Topics identified for revision or addition to UNGCP	Cross-cutting issues	Thematic issues	Addressed in the existing UNGCP?
E-commerce	✓	✓	No <sup>3</sup>
Financial services	✓	✓	No <sup>4</sup>
Access to knowledge	✓	✓	Partially (3.c and 22-25) <sup>5</sup>

<sup>3</sup> The United States emphasizes that although e-commerce is not treated as a separate topic under the UNGCP, the general principles underlying consumer protection as explained in the UNGCP apply equally in the context of e-commerce. The United States further emphasizes that the OECD currently is in the process of undertaking extensive work on many e-commerce related topics in the course of its review and revision of the 1999 OECD Guidelines. Accordingly, the United States expresses its view that it may be premature to propose new guidelines on e-commerce as part of the UNGCP until the OECD work is completed.

<sup>4</sup> The United States emphasizes that the OECD is currently in the process of working on an informal consultation in support of implementation of various G20/OECD high level principles regarding financial consumer protection. This document contains six topics that are the same as those identified in the questionnaire, namely: Legal, Regulatory and Supervisory Framework; Role of Oversight Bodies; Equitable and Fair Treatment of Consumers; Protection of Consumer Assets against Fraud and Misuse; Protection of Consumer Data and Privacy; and Competition. See Draft Text for “Effective Approaches to Support the Implementation of the remaining G20 High-Level Principles of Financial Consumer Protection” (circulated for informal consultation between 8-30 May 2014), available at <http://www.oecd.org/daf/fin/financial-education/FCP-Effective-Approaches-2014.pdf>. Consequently, the United States considers that it may be premature to propose new guidelines on financial services as part of the UNGCP until the OECD implementation work is completed.

<sup>5</sup> To the extent that this category is intended to relate to limitations on access to digital content based on intellectual property rights, the United States considers it to be beyond the scope of the goals of the working group and any revision of the UNGCP. In addition, the OECD Committee on Consumer Policy is currently working on consumer protection issues in relation to digital content products in its update of its 1999 e-commerce guidelines. Accordingly, the United States considers that the “other issues” working group should refrain from discussing the issue of information and digital content products altogether, and that the UNCTAD e-commerce working group commence discussions once the OECD work is completed.

Collective redress mechanisms		✓	Partially (32-34) <sup>6</sup>
Cross border trade	✓		Yes (32-34 and/or 63-69) <sup>7</sup>
Data protection	✓	✓	No <sup>8</sup>
Deceptive/abusive advertisement		✓	Partially (15, 17, 22-26) <sup>9</sup>
Public services (energy, transport, other)		✓	Yes (31, 56) <sup>10</sup>
Real Estate		✓	Partially (1)
Tourism	✓	✓	No <sup>11</sup>
Implementation	✓	✓	Partially (63-69) <sup>12</sup>

<sup>6</sup> Although the United States agrees that this issue merits further discussion in the context of the working group, we disagree that this should be included as a basis for recommending revision, given that the UNGCP's basic provisions on redress (*e.g.*, GL32-34) could be supplemented with the provisions in the OECD's 2007 Council Recommendation on Dispute Resolution and Redress relating to collective redress. See <http://www.oecd.org/internet/consumer/38960101.pdf>.

<sup>7</sup> The United States considers that the scope of this category is unclear. To the extent it this category intended to relate to remedies of cross-border trade, the United States agrees that this issue may merit further discussion in the context of the working group. However, the United States does not agree that this should be included as a basis for recommending revision, given that the UNGCP's basic provisions on redress (*e.g.*, GL32-34) could be supplemented with the provisions in the OECD's 2007 Council Recommendation on Dispute Resolution and Redress relating to collective redress. See <http://www.oecd.org/internet/consumer/38960101.pdf>. If this is intended to deal with trade issues, the FTC would object to the "other issues" working group addressing trade as part of the UNGCP.

<sup>8</sup> The United States objects to the inclusion of this topic in the "other issues" working group. There are a number of international initiatives underway in multiple fora to address data protection issues, including within UN bodies. The United States further considers that it may be premature to address this issue in the context of UNCTAD working groups because there are major efforts underway to reevaluate existing frameworks at a regional or national level

<sup>9</sup> The United States considers that the "other issues" working group should refrain from discussing this issue altogether until the OECD's work on the revision of the 1999 OECD E-commerce Guidelines is completed, given that it will address deceptive/abusive advertising in the digital context.

<sup>10</sup> The United States considers that the scope of this category is unclear. To the extent that this issue is intended to deal with sustainable consumption, the United States considers that this issue is already covered in the OECD guidelines. The United States would not object to discussing topics in these areas, even if concrete recommendations are not warranted.

<sup>11</sup> The United States considers that the scope of this category is unclear. To the extent that this topic is intended to foster development of new rights, the United States considers such a goal unwarranted. However, the United States is open to engaging in discussion on this category as a framework for enforcement cooperation on issues specific to tourism. As a general matter, the United States believes that protecting tourists is a worthy goal; however, in its view, consumer protection authorities' resources might be better spent focusing on improving enforcement capabilities, redress mechanisms and international cooperation as a general matter.

<sup>12</sup> The United States considers that many of the topics in the questionnaire relating to implementation (particularly in the area of institutional mechanisms for coordinating the process that may or may not result in recommendations) were vague or of such a general nature that it would be imprudent to take a position on these issues and proposals without further discussion as to specifics.

## **E. International cooperation**

16. Chapter IV of UNGCP is devoted to bilateral, regional and multilateral international cooperation. All its recommendations have been deemed relevant and useful at the present,<sup>13</sup> and a great number of examples exist, especially at the bilateral and regional levels. However, as consultations show, the need for international cooperation has not diminished. On the contrary, the current challenges to consumer protection are more globalised than ever, and shared by almost all national authorities. In particular, developing countries face some acute challenges, such as:

- shortage of human and financial resources;
- lack of adequate IT connectivity;
- lack of networking facilities; and
- insufficient expertise on specific legislation.

As shown in the Implementation chapter of this report, many experts have called upon UNCTAD to provide a forum to facilitate dialogue, networking workshops and exchange best practices.

## **F. Presentation and content of the report**

17. As envisaged during the Second Ad Hoc Expert Meeting on Consumer Protection, the secretariat report sums up the findings of the four Working Groups and concludes the consultations with a proposal for approaching the revision. The secretariat's findings mentioned in the report are the result of the following activities:

- In January 2014, the UNCTAD secretariat established four thematic Working Groups chaired by member States. Several meetings dedicated to the launch and discussion of each specific Working Group were held by teleconference on 3, 7, 14, 21 and 24 March 2014.
- A number of briefings on the sidelines of international meetings such as African Dialogue (Livingstone), CCP/OECD (Paris), CI (Chang Mai), FIAGC (Santo Domingo, Guadalajara, Bogota), ICPEN (Antwerp, Panama, Stockholm), as well as various national meetings held during the period 2013-2014. These briefings focused on the themes addressed by the four Working Groups relevant to the revision of UNGCP.
- A comparative analysis of the replies to the questionnaires dedicated to the work of the four Working Groups and of the comments to the first draft of this report.

In addition, the secretariat evaluated the replies of member States on the implementation of the UNGCP, their usefulness, shortcomings and areas for improvements.

18. This report is divided into four chapters, corresponding to the four Working Groups: e-commerce, financial services, other issues and implementation. Each section will summarise the issues raised in the questionnaires. These will be followed by a conclusion.

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<sup>13</sup> Op. cit. 1 p. 15

### III. Results of the Working Groups

#### A. E-commerce

19. The Working Group on E-commerce is chaired by Madame Nathalie Homobono, Director General for Competition Policy, Consumer Affairs and Fraud Control of France.

20. This Working Group acknowledges the findings of the E-Commerce section of the UNCTAD *Implementation Report* of 2013.<sup>14</sup> This report outlines protection frameworks in e-commerce of respondent member States. It states that many countries have a legal framework for e-commerce transactions, and many promote self-regulation by businesses. The actions taken by consumer protection authorities relating to e-commerce include law enforcement actions,<sup>15</sup> educational programmes,<sup>16</sup> opinion polls,<sup>17</sup> research studies<sup>18</sup>, workshops<sup>19</sup>, and sweeps<sup>20</sup>, among other activities. The report also presents the means of consumer redress for e-commerce, and finds that most national legislation allows for ordinary judicial proceedings, as well as administrative ones. Regarding alternative dispute settlement mechanisms, some innovative initiatives have been undertaken,<sup>21</sup> such as collective mediation or arbitration proceedings for e-commerce claims on this issue. Finally, the report reviews the work of the OECD in the area, particularly the OECD Guidelines for Consumer protection in the context of electronic commerce (1999) [hereinafter the OECD Guidelines] - currently under revision (expected: Spring 2017),<sup>22</sup> and voices the call to establish and enforce international standards, including neutral networks, and enhance international cooperation.

21. Further, this Working Group has taken note of the OECD Committee on Consumer Policy (CCP) Discussion of 9 April 2014. During this discussion, the delegate of France, currently chairing the Working Group on E-commerce, noted that the CCP's analytic work and instruments pertaining to e-commerce could be used in the present report as a useful reference document. During the Committee's meeting of October 2013, France suggested inviting interested countries that are not OECD members, but that are involved in the consultations of the present report, to join and contribute to the discussion on e-commerce within the OECD. This proposal was accepted by the Committee. The OECD Guidelines have been used as the basis for the questionnaires, as they are the most advanced and comprehensive compilation of best practice guidelines in the field of consumer protection in e-commerce. The general principles contained therein relate to transparent and effective

<sup>14</sup> Op. cit. 1, p. 15

<sup>15</sup> See Implementation Report at 17 ("Governments should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures."), available at [http://unctad.org/meetings/en/SessionalDocuments/ciclpd23\\_en.pdf](http://unctad.org/meetings/en/SessionalDocuments/ciclpd23_en.pdf).

<sup>16</sup> Chile; European Union (European Trustmarks Stakeholders Platform); Poland ("Safe shopping on the Internet" campaign of 2011; "Shopping on the Internet" brochure of 2012); United States.(econsumer.gov)

<sup>17</sup> European Union, Consumer Conditions Scoreboard, (7<sup>th</sup> Ed. May 2012) is available at: [http://ec.europa.eu/consumers/consumer\\_research/editions/cms7\\_en.htm](http://ec.europa.eu/consumers/consumer_research/editions/cms7_en.htm).

<sup>18</sup> Chile and United States.

<sup>19</sup> United States (see paragraph 26, *infra*).

<sup>20</sup> Chile, United States, International Consumer Protection Network (ICPEN).

<sup>21</sup> Chile, Mexico.

<sup>22</sup> Available at: <http://www.oecd.org/sti/consumer/34023811.pdf> (25/06/2014).

protection (section I), fair business, advertising and marketing practices (section II), online disclosures (section III) – which also include information about the business, goods or services and transactions – as well as confirmation process (section IV) and payments (section V). Dispute resolution and redress and privacy issues are dealt with in sections VI and VII, respectively, while consumer education and awareness are contained in section VIII. These OECD Guidelines also contain sections on implementation and global co-operation. Additional policy guidance has been developed by the CCP on mobile commerce,<sup>23</sup> online identity theft,<sup>24</sup> communication services,<sup>25</sup> mobile and online payments<sup>26</sup> and digital content products.<sup>27</sup>

22. This Working Group circulated a questionnaire in a call for contributions from member States and other relevant stakeholders on 3 and 24 March 2014.

23. The issues raised in the questionnaire of this Working Group are: (i) consumers' rights and obligations; (ii) obligations of businesses; (iii) protection of vulnerable consumers; (iv) mobile platform; (v) payment; (vi) alternative dispute settlement; (vii) consumer education; (viii) data and privacy protection; (ix) applicable law/forum; (x) bilateral, regional and international cooperation; and (xi) other issues to be considered (open to additional participants' comments).

24. The questionnaire asked participants several questions relating to the issues raised above: (i) pertinence of including the issue in the discussions of the Working Group; (ii) importance of the issue;<sup>28</sup> (iii) ability of the current UNGCP in addressing the issue; (iii) need for additional UNGCP; (iv) existence of adequate national or regional rules/policies; (v) compliance with relevant OECD Guidelines; (vi) endorsement of relevant OECD Guidelines; (vi) capacities needed for adequate regulation/implementation; (vii) need for cross-border cooperation; and (viii) further comments (open to additional participants' comments).

25. So far, the Working Group has received 37 submissions corresponding to: Argentina, Belize, Botswana, Brazil, Burkina Faso, Chile, Colombia, Costa Rica,

<sup>23</sup> OECD Policy Guidance for Addressing Emerging Consumer Protection and Empowerment Issues in Mobile Commerce) Available at: [www.oecd.org/sti/consumerpolicy/40879177.pdf](http://www.oecd.org/sti/consumerpolicy/40879177.pdf).

<sup>24</sup> OECD Policy Guidance on Online Identity Theft available at: [www.oecd.org/sti/consumerpolicy/40879136.pdf](http://www.oecd.org/sti/consumerpolicy/40879136.pdf)

<sup>25</sup> OECD Policy Guidance for Protecting and Empowering Consumers in Communication Services available at: [www.oecd.org/sti/consumerpolicy/40878993.pdf](http://www.oecd.org/sti/consumerpolicy/40878993.pdf).

<sup>26</sup> OECD Consumer Policy Guidance on Mobile and Online Payments, available at [www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=dsti/cp%282011%2924/final&doclanguage=en](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=dsti/cp%282011%2924/final&doclanguage=en)

<sup>27</sup> Forthcoming.

<sup>28</sup> The United States questions the validity of calculating such values in this manner to indicate relative support for each issue, as it appears to weigh member countries and non-members equally. Accordingly, it elected not to assign a particular weight as to the importance of each issue; thus, its submission did not factor into the calculation of the values assigned to relative importance of the issues. In addition, the United States considers that these calculated values are not representative of member state views given that these values are limited to a subset of working group participants and that the views of many other member States are not included. The United States' objection to this quantification approach applies to all four working groups described in this report.

Dominican Republic, El Salvador, Egypt, France, Hong Kong (China), Honduras, Israel, Italy, Republic of Korea, Japan, Mexico, Panama, Peru, Poland, Seychelles, South Africa,<sup>29</sup> Switzerland, Trinidad and Tobago, Tunisia, the United States of America<sup>30</sup>, Uruguay, Zambia, Consumers International (CI), Consumer Unity and Trust Society (CUTS) the International Chamber of Commerce (ICC), Mumbai Grahak Panchayat of India (MGP), Nippon Consumers for Better Standards (NCOS) and the University of New Delhi..

26. All respondents unanimously agreed that the *rights and obligations of consumers*, along with the specificities of e-commerce, were relevant for the discussions of this Working Group. With some exceptions,<sup>31</sup> experts believe UNGCP do not currently address the particular issues arising from e-commerce and thus additional guidelines are warranted. A great number of member States have a framework of rules and/or policies relating to e-commerce consumers' rights and obligations.<sup>32</sup> While countries such as El Salvador,

<sup>29</sup> South Africa submitted contributions from two official institutions: the National Consumer Commission and the National Consumer Tribunal.

<sup>30</sup> The United States Federal Trade Commission submitted informal comments for the working groups on electronic commerce, financial services and "other issues," and provided informal comments on the draft of this report, with input from other agencies. The FTC cautions that it has characterized its submissions (that is, in the e-commerce working group as well as the other working groups) as "informal" given that there are many different agencies in the United States with authority in this area. These questionnaire responses were intended for the sole purpose of providing information to the working groups regarding the current status of law in the United States. They cannot be considered to represent the views of the Federal Trade Commission as a whole or any individual commissioner or any other United States agency. Nonetheless, the views expressed in the questionnaire should be considered in any assessment of the preferences or the working group. The United States emphasizes that although e-commerce is not treated as a separate topic under the UNGCP, the general principles underlying consumer protection as explained in the UNGCP apply equally in the context of e-commerce. The United States further emphasizes that the OECD currently is in the process of undertaking extensive work on many e-commerce related topics in the course of its review and revision of the 1999 OECD Guidelines. Accordingly, the United States expresses its view that it may be premature to propose new guidelines on e-commerce as part of the UNGCP until the OECD work is completed. As a general matter, the United States does not object to the discussion of concern to members in the areas identified in the questionnaires, but considers it premature to determine whether concrete recommendations are warranted, particularly where the scope and nature of such recommendations are unknown.

<sup>31</sup> By contrast, some national authorities consider that the current UNGCP do address the relevant issues. Namely, Honduras believes GL 10 can address the 'right to no less protection than afforded in other forms of commerce.' Regarding the 'right to accurate and easily accessible information on the goods or services' GLs 22, 23, and 10 have been suggested by Argentina, Belize, Botswana Honduras, Peru and Zambia. According to Argentina and Peru, the 'right to accurate and easily accessible information on the transaction' can be dealt with GLs 21c, and 22 to 24 ; while for Honduras the same may be done with GLs 15, 16, 22, and 26. Argentina, Dominican Republic, Honduras and Zambia regard GLs 14,16, 18, and 19 as sufficiently addressing the 'right to non-defective products'. Finally, Honduras regards the 'obligation to pay' as covered in GLs 10, 35, and 69.

<sup>32</sup> Among the national authorities that believe they have an adequate framework: Argentina (Consumer Protection Law 24,240 and Resolution S.C.T. N° 104/2005); Botswana is in the process of enacting an Electronic Communications and Transactions Act as well as setting up a Broadband Division which is currently in the process of developing a strategy to cover all issues on safety on the internet; Brazil (Decree n 7.962, 15.03.2013, on electronic commerce contracts and Consumer Defense Code); Burkina Faso (Law 045-2009/AN of 10 November 2009); Cape Verde; Chile (Law 19.496, in particular articles 3 bis and 20) ; Colombia (Capítulo VI "Protección al consumidor de comercio electrónico" (artículos 49 a 54) de la Ley 1480 de 2011 "Por medio de la cual se expide el Estatuto del Consumidor y se dictan otras disposiciones") Egypt (Consumer Protection Law), France

Mexico and Peru rely on general civil law legislation to cover e-commerce issues, Chile, Colombia, France, Egypt, the Russian Federation, the United States, and Republic of Korea, have special provisions contained in consumer protection laws, whereas others have drafted specific legislation.<sup>33</sup> However, some respondents believe their current legal and policy framework is not adequate,<sup>34</sup> or only partially adequate.<sup>35</sup> France and Israel afford more favourable protection to consumers of e-commerce than to consumers of other forms of commerce.<sup>36</sup> The OECD Guidelines' principles that relate to information disclosures about consumer rights and obligations<sup>37</sup> have been widely implemented by United Nations

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(Consumption Code and more recently Law of 17 March 2014, transposing EU Directive of 25 October 2011; Ghana; Gambia; Honduras (Consumer Protection Law); Israel (Consumer Protection Law, articles 14C, 14D and 14E); Mexico (Federal Consumer Protection Law); Poland (Consumer Protection Law and Policies, transposing EU Law [s.o.]); South Africa (Consumer Protection Act and Electronic Communications and Transactions Act); Republic of Korea (Act on the Consumer Protection in Electronic Commerce) Switzerland (Civil Law Code, CO RS 220, and Unfair Competition Law art. 3 al. 1 lit. s and al. 2); Tunisia (Law 2000-83 on e-commerce, Civil Law Code, Law 2005-51 of 27 June 2005, Law 98-40 of 2 June 1998); the United States (the FTC Act, the CAN-SPAM Act of 2003, the SAFE WEB Act of 2006, COPPA Act, the Electronic Fund Transfer Act, Fair Credit Billing Act, among others); Uruguay (Consumer Protection Law); and Zambia (Competition and Consumer Protection Policy and Competition and Consumer Protection Act No. 24 of 2010) For more information on legal framework on e-commerce for United Nations member States, please see UNCTAD Document TD/B/C.I/CLP/23 of 29 April 2013, p. 17.

<sup>33</sup> Op. cit. 1, p. 17. France reports its recent incorporation of the EU Regulation 2011/83 of 23 October 2011 concerning distance contracts, e-contracts and m-contracts into its Code de la Consommation (Article L.121-16 to L.121-24). The United States Federal Trade Commission enforces numerous federal laws governing consumer protection, including Section 5 of the FTC Act, 15 U.S.C. § 45 which provides it with broad authority to challenge a wide range of "unfair and deceptive acts or practices in commerce." Because of the flexible nature of this authority, the FTC applies its general authority in the context of e-commerce and emerging technologies, as well as implementing specific e-commerce legislation such as the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), the Restore Online Shoppers' Confidence Act, and The Children's Online Privacy Protection Act. It routinely applies these laws to electronic commerce consistent with the principle in the 1999 guidelines that "[c]onsumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce."

<sup>34</sup> In this sense: Belize, Costa Rica, Dominican Republic, Seychelles and Trinidad and Tobago.

<sup>35</sup> El Salvador (the Law only applies to businesses incorporated into Salvadorian Law) and Hong Kong (China)

<sup>36</sup> In France, e-consumers have a more favourable period for withdrawal (14 days), a maximum period for delivery of 30 days, and a maximum period for reimbursement of 1 day, in line with the EU Regulation 2011/83 of 25 October 2011. In Israel, the protection afforded to consumers in e-commerce, is embedded in articles 14C, 14D and 14E of the consumer protection law, and guarantees a higher standard than that afforded in over the counter (OTC) transactions. Although, there are specific transactions such as on-going transactions for medical services and timeshares, where the protection afforded to consumers is even higher.

<sup>37</sup> The OECD Guidelines that the questionnaire is based on has linked to consumer rights and obligations state: "Consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce

Governments, businesses, consumers and their representatives should work together to achieve such protection and determine what changes may be necessary to address the special circumstances of electronic commerce.

Businesses should take into account the global nature of electronic commerce and, wherever possible, should consider the various regulatory characteristics of the markets they target.

Businesses engaged in electronic commerce with consumers should provide accurate and easily accessible information describing the goods or services offered; sufficient to enable consumers to make an

member States, either in full or partially.<sup>38</sup> It is worth noting that respondents unanimously endorse the content of the OECD Guidelines (even when only partially implemented).<sup>39</sup> Regarding the capacities needed for an optimal implementation, various tools were identified: (i) monitoring, prosecution and enforcement powers and capacities;<sup>40</sup> (ii) legislative initiatives;<sup>41</sup> (iii) technical capacities;<sup>42</sup> (iv) guidelines and informative campaigns;<sup>43</sup> (v) training, and political will<sup>44</sup> and (vi) industry self-regulation.<sup>45</sup> For

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informed decision about whether to enter into the transaction and in a manner that makes it possible for consumers to maintain an adequate record of such information.

Businesses engaged in electronic commerce should provide sufficient information about the terms, conditions and costs associated with a transaction to enable consumers to make an informed decision about whether to enter into the transaction.

Such information should be clear, accurate, easily accessible, and provided in a manner that gives consumers an adequate opportunity for review before entering into the transaction.

Where more than one language is available to conduct a transaction, businesses should make available in those same languages all information necessary for consumers to make an informed decision about the transaction.

Businesses should provide consumers with a clear and full text of the relevant terms and conditions of the transaction in a manner that makes it possible for consumers to access and maintain an adequate record of such information.

Where applicable and appropriate given the transaction, such information should include the following:

- i) An itemization of total costs collected and/or imposed by the business.
- ii) Notice of the existence of other routinely applicable costs to the consumer that are not collected and/or imposed by the business.
- iii) Terms of delivery or performance.
- iv) Terms, conditions and methods of payment.
- v) Restrictions, limitations or conditions of purchase, such as parental/guardian approval requirements, geographic or time restrictions.
- vi) Instructions for proper use including safety and health-care warnings.
- vii) Information relating to available after-sales service.

To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction.

The consumer should be able to cancel the transaction before concluding the purchase.

Where applicable and appropriate given the transaction, such information should include the following:

[...]

- viii) Details of and conditions related to withdrawal, termination, return, exchange, cancellation and/or refund policy information.
- ix) Available warranties and guarantees.

<sup>38</sup> In general terms, most OECD member countries have implemented the OECD Guidelines in full, while non-OECD countries have implemented them at least partially.

<sup>39</sup> El Salvador and Honduras highlighted the need to adapt the content of OECD Guidelines to domestic needs.

<sup>40</sup> Belize, Chile, France, Israel, Italy, Republic of Korea, United States, and CUTS. France reports that thanks to a recent decision, its prosecutors may carry out e-investigations without revealing their indemnity and may even take up false identities to collect evidence. Also, before an imminent bankruptcy, the French agency can adopt provisional measures to forbid the concerned business to ask for payment on the date of the order by the consumer. Finally, prosecutors may seek injunctions from Court.

<sup>41</sup> Dominican Republic and Zambia.

<sup>42</sup> France, Honduras, Hong Kong (China), and United States. France has a highly specialized office to monitor and control e-commerce with prosecuting powers.

<sup>43</sup> Poland and United States. The United States reports that, in keeping with the general principles underlying the Federal Trade Commission (FTC) Act, and, following the 1999 OECD Guidelines, the FTC issued guidance on the application of existing law to online advertising and marketing. There, the FTC

example, aside from bringing numerous consumer protection enforcement actions under the Federal Trade Commission Act and related statutes in the context of electronic commerce,<sup>46</sup> the United States has carried out numerous workshops and roundtables on: online disclosures, data security, mobile payments, mobile privacy, disclosures, spam, big data, behavioral advertising, digital rights management, connectivity of devices, and mobile device tracking, among others. Finally, cross-border cooperation was deemed necessary for most of these issues.<sup>47</sup> As shown in the UNCTAD *Implementation Report* of 2013, there is agreement on the need to establish and enforce international standards, including neutral networks, and enhance international cooperation.<sup>48</sup>

27. The importance of *businesses' obligations* was considered high in average, and all experts believe this issue should be included in the discussions of the Working Group. It is worth noting that the issues of reliable information on fake consumer reviews and price comparison sites, as well as the issues of fair business practices against pyramid sales and

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explained that [t]he same consumer protection laws that apply to commercial activities in other media apply online, including activities in the mobile marketplace. The FTC Act's prohibition on "unfair or deceptive acts or practices" encompasses online advertising, marketing, and sales. The FTC has also issued specific guidance in this context. For example, the FTC Dot.com Disclosure Guidance state that disclosures made online must be "clear and conspicuous" as determined by how reasonable consumers actually perceive and understand the disclosure within the context of the entire ad. The FTC Guidance recommends that, in evaluating whether an online disclosure is likely to be clear and conspicuous, advertisers should consider its placement in the ad and its proximity to the relevant claim. Additional considerations in the online context include the prominence of the disclosure; whether it is unavoidable; whether other parts of the ad distract attention from the disclosure; whether the disclosure needs to be repeated at different places on a website; whether disclosures in audio messages are presented at an adequate volume and cadence; whether visual disclosures appear for a sufficient duration; and whether the language of the disclosure is understandable to the intended audience. Regarding the language employed in advertisements, the FTC Guidance specifies that advertisers should use clear language and syntax and avoid legalese or technical jargon. Available at: <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>

<sup>44</sup> Botswana.

<sup>45</sup> ICC: Consolidated ICC International Code of Advertising and Marketing Communications Practice of 2011, available at: <http://www.codescentre.com/icc-code.aspx>.

<sup>46</sup> The FTC has brought actions in the context of electronic commerce against a wide variety of companies, including some of the largest in the sector, such as Google, Apple and Amazon. *See, e.g.*, Press Release "Google to Refund Consumers at Least \$19 Million to Settle FTC Complaint It Unlawfully Billed Parents for Children's Unauthorized In-App Charges" (Sept. 4, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/09/google-refund-consumers-least-19-million-settle-ftc-complaint-it>; Press Release "Apple Inc. Will Provide Full Consumer Refunds of At Least \$32.5 Million to Settle FTC Complaint It Charged for Kids' In-App Purchases Without Parental Consent," (Jan. 15, 2014) available at <http://www.ftc.gov/news-events/press-releases/2014/01/apple-inc-will-provide-full-consumer-refunds-least-325-million>; and Press Release "FTC Alleges Amazon Unlawfully Billed Parents for Millions of Dollars in Children's Unauthorized In-App Charges" (July 10, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/07/ftc-alleges-amazon-unlawfully-billed-parents-millions-dollars>.

<sup>47</sup> The United States' SAFE WEB Act authorizes the FTC to gather and share information (including confidential information) with foreign law enforcement authorities, and confirms the FTC's authority to take action in appropriate cross-border cases, including the authority to provide restitution to U.S. and foreign consumers injured by cross-border consumer protection law violations. *See* FED. TRADE COMM'N, THE US SAFE WEB ACT: PROTECTING CONSUMERS FROM SPAM, SPYWARE, AND FRAUD A LEGISLATIVE RECOMMENDATION TO CONGRESS, FED TRADE COMM'N (June 2005), available at <http://www.ftc.gov/reports/us-safe-web-act-protecting-consumers-spam-spyware-fraud-legislative-recommendation-congress>.

<sup>48</sup> *Op. cit.* 1, p. 17.

spam are rated in general as less important than the rest. Although in most cases experts believe new guidelines for UNGCP are needed, some of the existing guidelines have been identified as adequately addressing various businesses' obligations for e-commerce. In particular, the following issues have been identified by some experts as being covered by existing guidelines: (i) obligation to provide accurate and easily accessible information on the goods and services;<sup>49</sup> (ii) obligation to provide reliable information;<sup>50</sup> (iii) obligation to provide fair comparisons in price comparison sites;<sup>51</sup> (iv) adoption of reliable business practices;<sup>52</sup> (v) fight against deceptive business practices (including advertisement);<sup>53</sup> (vi) fight against abusive business practices;<sup>54</sup> and (vii) development of self-regulation

<sup>49</sup> Covered by GLs 12, 13, 18 and 25 according to Belize and Honduras, and GL 22 - 24 by Zambia.

<sup>50</sup> Covered by GLs 12, 13, 18 and 25 according to Honduras. France reports the EU Directive 2011/83, article 6, containing the necessary pre-contractual information to be provided: (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services; (b) the identity of the trader, such as his trading name; (c) the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting; (d) if different from the address provided in accordance with point (c), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints; (e) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided; (f) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate; (g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy; (h) where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with Article 11(1), as well as the model withdrawal form set out in Annex I(B); (i) where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods; (j) that, if the consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall be liable to pay the trader reasonable costs in accordance with Article 14(3); (k) where a right of withdrawal is not provided for in accordance with Article 16, the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal. (l) a reminder of the existence of a legal guarantee of conformity for goods; (m) where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees; (n) the existence of relevant codes of conduct, as defined in point (f) of Article 2 of Directive 2005/29/EC, and how copies of them can be obtained, where applicable; (o) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract; (p) where applicable, the minimum duration of the consumer's obligations under the contract; (q) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader; (r) where applicable, the functionality, including applicable technical protection measures, of digital content; (s) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of; (t) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject.

<sup>51</sup> Covered by GLs 18, 19 37<sup>e</sup> and 39c according to Honduras.

<sup>52</sup> Covered by GL 25 according to Argentina, GL 15 according to Honduras and GL 15, 17, 25, and 26 by NCOS-Japan.

<sup>53</sup> Covered by GL 25 according to Argentina and GLs 1d, 15-17 and 22 according to Belize and Honduras. ICC's International Code of Advertising and Marketing Communications Practices (op.cit. 30), Article 1 states: "All marketing communications should be legal, decent, honest and truthful. All marketing communications should be prepared with a due sense of social and professional responsibility and should conform to the principles of fair competition, as generally accepted in business. No communication should be such as to impair public confidence in marketing"

<sup>54</sup> Covered by GLs 17 and 21 according to Belize, Argentina and Zambia and GL 1d according to Honduras.

mechanisms.<sup>55</sup> Some countries, such as Chile, Colombia, Egypt, Mexico and the United States have promoted the adoption of industry self-regulation, which may go beyond mandatory regulations on such issues as privacy protection and access to data.<sup>56</sup> The ICC identified the advantages of industry self-regulation as: (i) the ability to swiftly update codes to address new issues; (ii) a set of universal standards that can be accepted by different cultures and political systems; (iii) a true global consensus with buy-in from business; and (iv) an effective and cost-efficient system<sup>57</sup>. Most national authorities believe their legal and policy framework effectively addresses businesses' obligations,<sup>58</sup> and the majority of jurisdictions have implemented the relevant OECD Guidelines,<sup>59</sup> at least partially.<sup>60</sup> All participants endorsed the relevant OECD Guidelines relating to this issue,<sup>61</sup>

<sup>55</sup> Covered by GL 26 according to CI. ICC notes that independent systems of self-regulation have been successfully applying the ICC Code for more than 75 years. According to ICC, the use of properly implemented advertising and marketing communications codes is acknowledged and accepted in all major markets as industry best practice and a recognized means of providing additional consumer protection; self-regulation is a tried and tested system which has served responsible business well, for the benefit of consumers all over the world. It also notes the ICC Code (opc.cit 30) Articles 25 and 26 on Implementation and Respect for self-regulatory decisions, respectively.

<sup>56</sup> Chile (Código de Buenas Prácticas para el Comercio Electrónico, de la Cámara de Comercio de Santiago A.G.) and Mexico (Código de Ética y la Asociación Mexicana de Internet, [http://www.amipci.org.mx/pics/doctos/codigo\\_etica.pdf](http://www.amipci.org.mx/pics/doctos/codigo_etica.pdf)), Op. cit. 1, p. 17. The FTC generally supports the development of self-regulatory programs in the context of e-commerce in a variety of ways. For example, in 2012, the FTC convened a workshop on using enforceable industry codes of conduct to protect consumers in cross-border commerce. See *Enforceable Codes of Conduct: Protecting Consumers Across Borders*, FED. TRADE COMM'N (Nov. 29, 2012), <http://www.ftc.gov/news-events/events-calendar/2012/11/enforceable-codes-conduct-protecting-consumers-across-borders>.

<sup>57</sup> CI proposed a new Guideline to make all laws, regulations and Codes of Practice freely and fully accessible to consumers, including via internet.

<sup>58</sup> On the contrary Belize, Costa Rica, Dominican Republic, El Salvador, Panama Trinidad and Tobago.

<sup>59</sup> Also see the various implementation reports carried out by the OECD, beginning in 2001: [www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=DSTI/CP\(2000\)7/FINAL](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=DSTI/CP(2000)7/FINAL)). Also see the OECD background report on e-commerce of 2009: see [www.oecd.org/ict/econsumerconference/44047583.pdf](http://www.oecd.org/ict/econsumerconference/44047583.pdf)

<sup>60</sup> Fully incorporated: Brazil, Honduras, Italy, Japan, South Africa, United States; partially incorporated: Botswana, Brazil, Burkina Faso, Chile, Dominican Republic, Japan, Hong Kong (China), Israel, Poland, Switzerland, Tunisia, and Uruguay.

<sup>61</sup> The OECD Guidelines that this questionnaire has linked to businesses obligations holds:

"Businesses engaged in electronic commerce with consumers should provide accurate, clear and easily accessible information about themselves sufficient to allow, at a minimum:

- i) Identification of the business – including the legal name of the business and the name under which the business trades; the principal geographic address for the business; e-mail address or other electronic means of contact, or telephone number; and, where applicable, an address for registration purposes and any relevant government registration or licence numbers.
- ii) Prompt, easy and effective consumer communication with the business.
- iii) Appropriate and effective resolution of disputes.
- iv) Service of legal process.
- v) Location of the business and its principals by law enforcement and regulatory officials.

Businesses should not exploit the special characteristics of electronic commerce to hide their true identity or location, or to avoid compliance with consumer protection standards and/or enforcement mechanisms.

Businesses engaged in electronic commerce with consumers should provide accurate and easily accessible information describing the goods or services offered; sufficient to enable consumers to make an informed decision about whether to enter into the transaction and in a manner that makes it possible for consumers to maintain an adequate record of such information.

albeit with some nuances.<sup>62</sup> Experts believe the capacities needed to address business obligations are similar to those needed for consumer rights and obligations, stressing the importance of: (i) representing consumers in court;<sup>63</sup> (ii) supervision and monitoring;<sup>64</sup> (iii) dialogue with businesses, educational and information campaigns;<sup>65</sup> and also (iv) dissuasive

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Businesses engaged in electronic commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices

Businesses should not make any representation, or omission, or engage in any practice that is likely to be deceptive, misleading, fraudulent or unfair.

Businesses selling, promoting or marketing goods or services to consumers should not engage in practices that are likely to cause unreasonable risk of harm to consumers.

Whenever businesses make information available about themselves or the goods or services they provide, they should present such information in a clear, conspicuous, accurate and easily accessible manner.

Businesses should comply with any representations they make regarding policies or practices relating to their transactions with consumers.

Advertising and marketing should be clearly identifiable as such. Advertising and marketing should identify the business on whose behalf the marketing or advertising is being conducted where failure to do so would be deceptive.

Businesses should be able to substantiate any express or implied representations as long as the representations are maintained, and for a reasonable time thereafter.

All information that refers to costs should indicate the applicable currency.

Whenever businesses make information available about themselves or the goods or services they provide, they should present such information in a clear, conspicuous, accurate and easily accessible manner.

Businesses should develop and implement effective and easy-to-use procedures that allow consumers to choose whether or not they wish to receive unsolicited commercial e-mail messages.

Where consumers have indicated that they do not want to receive unsolicited commercial e-mail messages, such choice should be respected.

Unsolicited commercial e-mail may subject to specific legal or self-regulatory requirements.

<sup>62</sup> Argentina proposes to eliminate the word «unreasonable» from the OECD Guideline : «Businesses selling, promoting or marketing goods or services to consumers should not engage in practices that are likely to cause unreasonable risk of harm to consumers»; Burkina Faso and Costa Rica partially endorse OECD Guideline: “Whenever businesses make information available about themselves or the goods or services they provide, they should present such information in a clear, conspicuous, accurate and easily accessible manner”; Brazil and Israel partially endorse the OECD Guideline: “Businesses should develop and implement effective and easy-to-use procedures that allow consumers to choose whether or not they wish to receive unsolicited commercial e-mail messages (et al.)”. The United States supports tracking the language of the OECD Guidelines exactly, given that not every conceivable risk of harm can be prevented.

<sup>63</sup> Dominican Republic, Chile, and United States.

<sup>64</sup> Republic of Korea, United States CUTS.

<sup>65</sup> France, Poland, and United States. In 2013, France produced a booklet containing the specific obligations of e-professionals.

penalties.<sup>66</sup> In most cases, joint actions such as sweeps,<sup>67</sup> information exchange,<sup>68</sup> and consumer protection authorities' international and regional enforcement networks<sup>69</sup> were deemed necessary to address the issue of businesses' obligations.

28. The issue of *vulnerable consumers* has attracted unanimous acceptance for inclusion in the discussions, and its importance was considered very high by respondents. Argentina, Republic of Korea and CI<sup>70</sup> believe that GLs<sup>71</sup> 35<sup>72</sup> and 40<sup>73</sup> already address this issue. On the other hand, some experts would be favourable to proposing new Guidelines for inclusion.<sup>74</sup> Most respondent jurisdictions have an adequate legal and policy frameworks,<sup>75</sup> and have incorporated the relevant OECD Guideline<sup>76</sup> either fully<sup>77</sup> or partially.<sup>78</sup> All participants endorse the relevant OECD Guideline. ICC's International Code of Advertising and Marketing (hereinafter the ICC Code)<sup>79</sup> also has provisions on social responsibility and forms of discrimination, including that based upon race, national origin, religion, gender, age disability or sexual orientation. Hong Kong (China) and the United States have special regulations on sales to children<sup>80</sup> and initiatives relating to the elderly.<sup>81</sup> The United States released reports and guidance on the application of the consumer protection law for

<sup>66</sup> Belize, France and South Africa (National Consumer Tribunal). France reports the increase in criminal fines for breaches of consumer protection law: up to 300 000 Euros (natural persons) and to 1 500 000 Euros (legal entity); for specific infringements, the Court can decide to take a fine equivalent to 10% of the turnover.

<sup>67</sup> As carried out in ICPEN, Op. cit. 1, p. 17.

<sup>68</sup> Colombia, Poland, United States and Zambia.

<sup>69</sup> Colombia, El Salvador, Egypt, France, Hong Kong (China), Republic of Korea, and United States.

<sup>70</sup> CI proposes an amendment to UNGCP 35 and 40 and the inclusion of: "Bearing in mind the value of the Internet as a channel for consumer education, including long distance learning and knowledge sharing between consumers, governments should facilitate universal access to the Internet through affordable telecommunications and Internet costs with special consideration given to the needs of public service and educational institutions, and of disadvantaged and disabled population groups.

<sup>71</sup> "GL" refers to a specific guideline within UNGCP.

<sup>72</sup> UNGCP Rec.35: "[...] In developing such programmes, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels.[...]"

<sup>73</sup> UNGCP Rec. 40: "Bearing in mind the need to reach rural consumers and illiterate consumers, Governments should, as appropriate, develop or encourage the development of consumer information programmes in the mass media."

<sup>74</sup> Belize, Colombia, Dominican Republic, El Salvador, Egypt, Honduras, Republic of Korea, Panama, Peru, South Africa, Trinidad and Tobago, Zambia, NCOS-Japan and CI. The United States considers it premature to determine whether inclusion of these issues would be warranted.

<sup>75</sup> Botswana, Burkina Faso, Hong Kong (China), Poland, South Africa, Switzerland, United States.

<sup>76</sup> The OECD Guideline that this questionnaire has linked to vulnerable consumers reads :

"Businesses should take special care in advertising or marketing that is targeted to children, the elderly, the seriously ill, and others who may not have the capacity to fully understand the information with which they are presented"

<sup>77</sup> Belize, Brazil, Colombia, Dominican Republic, El Salvador, Egypt, Honduras, Israel, Republic of Korea, Panama, Peru, Poland, South Africa, and United States.

<sup>78</sup> Botswana, Hong Kong (China), and Switzerland.

<sup>79</sup> Op cit, 30, Article 4.

<sup>80</sup> For the purpose of privacy-related sections, the ICC International Code (op. cit. 30) refers to "children" as 12 and under. The FTC has also brought numerous cases involving deceptive advertising or unfair practices where children are consumers in the context of e-commerce. For example, in January 2014 the FTC reached a settlement with Apple over its practices involving unauthorized charges in "apps" used by children.

<sup>81</sup> In the case of the United States, the FTC brought charges against defendants who targeted vulnerable consumers such as the elderly and has partnered with the charitable AARP Foundation to set up counselling for the elderly.

vulnerable groups such as children on topics such as mobile applications;<sup>82</sup> food advertisement;<sup>83</sup> the alcohol industry's compliance with self-regulatory guidelines (including those designed to address concerns about youth access to alcohol marketing);<sup>84</sup> and the marketing of violent entertainment to children.<sup>85</sup> The United States has also brought numerous cases involving deceptive advertising or unfair practices where children are consumers.<sup>86</sup> In this matter, the United States reports that its consumer protection agency is also responsible for implementing a specific privacy statute covering children's online activity: the Children's Online Privacy Protection Act,<sup>87</sup> which has been updated in 2013.<sup>88</sup> In the case of South Africa, contractual capacity is limited for some people and may

<sup>82</sup> Federal Trade Commission Staff Report, "Mobile Apps for Kids: Disclosures Still Not Making the Grade" (December 2012), available at <http://www.ftc.gov/os/2012/12/121210mobilekidsappreport.pdf>, op. cit., 1, p. 17.

<sup>83</sup> Federal Trade Commission, A Review of Food Marketing to Children and Adolescents (Dec. 2011), available at <http://www.ftc.gov/sites/default/files/documents/reports/review-food-marketing-children-and-adolescents-follow-report/121221foodmarketingreport.pdf> (follow-up report to Marketing Food to Children and Adolescents: A Review of Industry Expenditures, Activities, and Self-Regulation (2008)). The report examines the progress industry has made in marketing food responsibly to children, and identifies areas where further efforts could be made by the food and beverage industry and the media industry to improve the nutritional quality of foods marketed to youth

<sup>84</sup> Federal Trade Commission, SELF-REGULATION IN THE ALCOHOL INDUSTRY (Mar. 2014), available at <http://www.ftc.gov/system/files/documents/reports/self-regulation-alcohol-industry-report-federal-trade-commission/140320alcoholreport.pdf>.

<sup>85</sup> Federal Trade Commission, MARKETING VIOLENT ENTERTAINMENT TO CHILDREN: A SIXTH FOLLOW-UP REVIEW OF INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING & ELECTRONIC GAME INDUSTRIES (Dec. 2009), available at <http://www.ftc.gov/sites/default/files/documents/reports/marketing-violent-entertainment-children-sixth-follow-review-industry-practices-motion-picture-music/p994511violententertainment.pdf>. See also Federal Trade Commission Press Release, FTC Undercover Shopper Survey on Entertainment Ratings Enforcement Finds Compliance Highest Among Video Game Sellers and Movie Theaters (Mar. 2013), <http://www.ftc.gov/news-events/press-releases/2013/03/ftc-undercover-shopper-survey-entertainment-ratings-enforcement>.

<sup>86</sup> See, e.g., In re Grey Advertising, Inc., available at <http://www.ftc.gov/news-events/press-releases/1996/08/hasbro-pay-280000-settle-ftc-charges-deceptive-toy-advertising> (deceptive toy advertising); and In re BMC Group and In re NBTY, Inc., et al., available at <http://www.ftc.gov/news-events/press-releases/2013/08/ftc-sends-refunds-consumers-who-purchased-disney-or-marvel-hero> (false health claims about children's vitamins); FTC Press Release, Apple Inc. Will Provide Full Consumer Refunds of At Least \$32.5 Million to Settle FTC Complaint It Charged for Kids' In-App Purchases Without Parental Consent (Jan. 2014), <http://www.ftc.gov/news-events/press-releases/2014/01/apple-inc-will-provide-full-consumer-refunds-least-325-million>; FTC Press Release, FTC Alleges Amazon Unlawfully Billed Parents for Millions of Dollars in Children's Unauthorized In-App Charges (July 2014), <http://www.ftc.gov/news-events/press-releases/2014/07/ftc-alleges-amazon-unlawfully-billed-parents-millions-dollars>

<sup>87</sup> Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §§ 6501-6506, which protects children's privacy by giving parents the tools to control what information is collected from their children online. Under the Act's implementing Rule (codified at 16 C.F.R. Part 312), operators of commercial websites and online services directed to or knowingly collecting personal information from children under 13 must (1) notify parents of their information practices; (2) obtain verifiable parental consent before collecting a child's personal information; (3) give parents a choice as to whether their child's information will be disclosed to third parties; (4) provide parents access to their child's information; (5) let parents prevent further use of collected information; (6) not require a child to provide more information than is reasonably necessary to participate in an activity; and (7) maintain the confidentiality, security, and integrity of the information. Available at: <http://www.business.ftc.gov/documents/0493-Complying-with-COPPA-Frequently-Asked-Questions> (last visited July 22, 2014).

<sup>88</sup> Children's Online Privacy Protection Rule; Final Rule Amendments, 78 Fed. Reg. 3972 (Fed. Trade Comm'n Jan. 2013). Among other things, the final amendments to the rule (1) modify the list of "personal

thus avoid contract enforcement upon them. Uruguay notes that the issue of protection of vulnerable consumers should be understood as a general principle and not limited to e-commerce. ICC has a provision on children and young people referring to their inexperience and credulity; the avoidance of harm; social values of marketing; and the personal information of children.<sup>89</sup> Israel has recently amended the consumer protection law and introduced a new offence entitled "unfair influence on the consumer"<sup>90</sup> and the United States have issued the Mortgage Assistance Relief Services Rule for "financially distressed consumers", which bans mortgage relief providers from collecting fees until they have obtained a loan modification or other relief for a consumer.<sup>91</sup> Finally, the United States has taken a series of measures to combat scams against immigrant communities.<sup>92,93</sup>

29. *Mobile platforms* were considered a priority for a quarter of the respondents.<sup>94</sup> Almost all agreed that new Guidelines are needed. This issue is also present in the current work of ECOWAS: the Central Bank of West African States is working on a regional framework and Senegal has launched the FERLO initiative to provide access to banking services to excluded populations. It is worth noting that the proportion of owners of a bank account in the region currently stands at 15% of the population, whereas the percentage of owners of a mobile phone ranges between 31.5 and 98.4%.<sup>95</sup> The Dominican Republic,

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information" that cannot be collected without parental notice and consent, clarifying that this category includes geo-location information, photographs, and videos; (2) offer companies a streamlined, voluntary, and transparent approval process for new ways of getting parental consent; (3) close a loophole that allowed kid-directed apps and websites to permit third parties to collect personal information from children through plug-ins without parental notice and consent; (4) extend coverage in some of those cases so that the third parties doing the additional collection also have to comply with COPPA; (5) extend the COPPA Rule to cover persistent identifiers that can recognize users over time and across different websites or online services, such as IP addresses and mobile device IDs; (6) strengthen data security protections by requiring that covered website operators and online service providers take reasonable steps to release children's personal information only to companies that are capable of keeping it secure and confidential; (7) require that covered website operators adopt reasonable procedures for data retention and deletion; and (8) strengthen the FTC's oversight of self-regulatory safe harbour programs. Available at <http://www.gpo.gov/fdsys/pkg/FR-2013-01-17/pdf/2012-31341.pdf>

<sup>89</sup> ICC Code (op.cit., 30) Article 8 - Children and young people. See also article D5- Digital marketing communications and children and D7-Children.

<sup>90</sup> The amendment has been approved by parliament and will come into force on 1 January 2015. The new offence includes an exhaustive list of conducts that constitute an aggressive and illegitimate behaviour and will therefore be regarded as a violation of the law. In addition, Israel has specific regulations protecting children (which also apply to e-commerce) : the Consumer Protection Regulations (advertising and marketing methods aimed at minors)-1991 regulating all issues concerning marketing products to minors, prohibiting taking advantage of their young age and the ability to influence them.

<sup>91</sup> Mortgage Relief Scams, Fed. Trade Comm'n, <http://www.ftc.gov/news-events/media-resources/consumer-finance/mortgage-relief-scams> (last visited June 26, 2014).

<sup>92</sup> FTC Press Release, FTC Settlement Bans Pyramid Scheme Operators From Multi-Level Marketing (May 2014), <http://www.ftc.gov/news-events/press-releases/2014/05/ftc-settlement-bans-pyramid-scheme-operators-multi-level>.

<sup>93</sup> CI proposes a new guideline that addresses misleading and abusive advertising, especially in relation to children and food, and consumers that need a special protection.

<sup>94</sup> Brazil believes it should not be included in the discussions.

<sup>95</sup> UNCTAD, Rapport sur le Séminaire Régional sur l'harmonisation de cyberlegislation dans la CEDEAO, Dakar 11 à 14 février 2014, Rapport Final, p. 4. available at: <http://unctad.org/fr/Pages/MeetingDetails.aspx?meetingid=506>

Tanzania<sup>96</sup> and Israel state that the powers needed for mobile payments exceed their mandate (in favour of the Ministry of Communications, the Telecommunications Regulatory Authority and the Monetary Board, respectively). Brazil believes the UNGCP should be neutral to technology used in consumer relations, while CI<sup>97</sup> and CUTS think a 'no-less favourable' principle would be appropriate. France agrees with CUTS, but highlights the need to take into account the small size of screens when ensuring consumers' right to complete information<sup>98</sup>. South Africa would welcome the creation of a Regulatory Board to address the specificities of mobile payments. The United States has issued mobile apps guidelines covering issues of privacy, advertising and disclosure, and security<sup>99</sup>; while ICC is currently developing further guidance addressing issues unique to mobile marketing.

30. Related to the issue above, payment was considered highly important, and sixteen experts believe new UNGCP<sup>100</sup> are needed. Many member States<sup>101</sup> have incorporated the relevant OECD Guidelines<sup>102</sup> on this issue, and all participants endorse them. However, Colombia, the Dominican Republic, Hong Kong (China), and Israel noted that payments

<sup>96</sup> As reported in the Implementation Report of 2013, op.cit. 1 p. 17.

<sup>97</sup> Proposed new text: "Consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce"

<sup>98</sup> In this sense, France reports the EU Directive 2011/83 of 25 October 2011, recital 36: "*In the case of distance contracts, the information requirements should be adapted to take into account the technical constraints of certain media, such as the restrictions on the number of characters on certain mobile telephone screens or the time constraint on television sales spots. In such cases the trader should comply with a minimum set of information requirements and refer the consumer to another source of information, for instance by providing a toll free telephone number or a hypertext link to a webpage of the trader where the relevant information is directly available and easily accessible.*" Also, article 8: "*If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to in points (a), (b), (e), (h) and (o) of Article 6(1). The other information referred to in Article 6(1) shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1 of this Article*".

<sup>99</sup> The FTC has been examining the privacy implications of mobile technologies for more than a decade. (For a comprehensive list of the agency's work in this area, see <http://www.ftc.gov/news-events/media-resources/mobile-technology>. See also FED. TRADE COMM'N, MOBILE PRIVACY DISCLOSURES: BUILDING TRUST THROUGH TRANSPARENCY 20-27 (2013), available at [www.ftc.gov/sites/default/files/documents/reports/mobile-privacy-disclosures-building-trust-through-transparency-federal-trade-commission-staff-report/130201mobileprivacyreport.pdf](http://www.ftc.gov/sites/default/files/documents/reports/mobile-privacy-disclosures-building-trust-through-transparency-federal-trade-commission-staff-report/130201mobileprivacyreport.pdf).; see also In Short: Advertising & Privacy Disclosures in a Digital World (2012), <http://www.ftc.gov/news-events/events-calendar/2012/05/short-advertising-privacy-disclosures-digital-world>

<sup>100</sup> Belize, Botswana, Colombia, Costa Rica, El Salvador, Egypt, Republic of Korea, Panama, Peru, Poland, South Africa, Switzerland, Trinidad and Tobago, Zambia CI and NCOS-Japan.

<sup>101</sup> Belize, Chile, Colombia, Egypt, France, Israel, Republic of Korea Poland, South Africa, Tunisia, and Uruguay.

<sup>102</sup> The OECD Guidelines that the questionnaire has linked to payments are:

Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.

Limitations of liability for unauthorised or fraudulent use of payment systems, and chargeback mechanisms offer powerful tools to enhance consumer confidence and their development and use should be encouraged in the context of electronic commerce.

are overseen by other governmental agencies than consumer protection authorities.<sup>103</sup> Colombia<sup>104</sup> and El Salvador stressed the importance of reimbursement if fraud, non-deliver, non-adequacy with contract clauses. The United States FTC enforces various laws governing payments in the context of e-commerce;<sup>105</sup> has examined closely the issue of mobile financial systems used by consumers and the consumer protection issues posed by such use, and held a workshop specifically to examine the use of mobile payments in the marketplace and how this emerging technology has an impact on consumers;<sup>106</sup> and has brought law enforcement actions relating to mobile technology issues, including a number of actions against mobile application developers.<sup>107</sup> The ICC Code contains specific provisions on sales promotion, direct marketing, and advertising and marketing communications using digital interactive media.<sup>108</sup> CI proposed new text for incorporation on the issue of payment.<sup>109</sup>

31. *Dispute settlement mechanisms* for e-commerce were considered very relevant. Many countries,<sup>110</sup> however, believe this issue is addressed by existing GLs 32,<sup>111,112</sup> 33,<sup>113</sup>

<sup>103</sup> In the case of Colombia and the Dominican Republic, this falls within the powers of the Monetary Board and the Bank Superintendence.

<sup>104</sup> Artículo 51, Estatuto Protección al Consumidor L 1480/2011: " Cuando las ventas de bienes se realicen mediante mecanismos de comercio electrónico, los participantes del proceso de pago deberán reversar los pagos que solicite el consumidor cuando sea objeto de fraude, o corresponda a una operación no solicitada, o el producto adquirido no sea recibido, o el producto entregado no corresponda a lo solicitado o sea defectuoso"

<sup>105</sup> See, e.g., Electronic Fund Transfer Act (EFTA) 15 U.S.C. § 1601, available at: <http://www.fdic.gov/regulations/laws/rules/6500-1350.html>; see also Regulation E - Electronic Fund Transfers 12 C.F.R. Part 1005; the Fair Credit Billing Act, 15 U.S.C. § 1601, available at <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title15/html/USCODE-2009-title15-chap41.htm>.

<sup>106</sup> See Federal Trade Commission Press Release "FTC Staff Provides Comment to CFPB on Mobile Financial Services," (Sept. 12, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/09/ftc-staff-provides-comment-cfpb-mobile-financial-services> (highlighting five consumer protection issues posed by mobile financial services and the steps taken by the FTC to address them). See also Federal Trade Commission, Paper, Plastic... or Mobile? An FTC Workshop on Mobile Payments 5-6 (March 2013), available at [http://www.ftc.gov/sites/default/files/documents/reports/paper-plastic-or-mobile-ftc-workshop-mobile-payments/p0124908\\_mobile\\_payments\\_workshop\\_report\\_02-28-13.pdf](http://www.ftc.gov/sites/default/files/documents/reports/paper-plastic-or-mobile-ftc-workshop-mobile-payments/p0124908_mobile_payments_workshop_report_02-28-13.pdf) (citing 12 C.F.R. § 1005.6).

<sup>107</sup> A list of actions involving mobile technology in general can be found at <http://www.ftc.gov/news-events/media-resources/mobile-technology>; many of the actions on this list include mobile payment issues.

<sup>108</sup> ICC Code (op. cit., 30) Chapter A-Sales promotion, Chapter C: Direct marketing, Chapter D - Advertising and marketing communications using digital interactive media.

<sup>109</sup> Proposed new text: To avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services to be purchased; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction. Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.

<sup>110</sup> Argentina, Belize, Botswana, Colombia Honduras, Republic of Korea, Peru, Switzerland, Trinidad and Tobago, Zambia, NCOS-Japan and CI.

<sup>111</sup> UNGCP 32: "Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers."

<sup>112</sup> CI proposes amendment to this guideline to include collective redress; online and offline.

<sup>113</sup> UNGCP 33: "Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers."

and 34.<sup>114,115</sup> Further, some experts<sup>116</sup> noted that cross-border dispute settlement mechanisms may already be addressed under GL 63.<sup>117</sup> Most member States have an adequate regulatory and policy framework; and the relevant OECD Guidelines<sup>118</sup> have been fully or partially implemented most of the responding jurisdictions.<sup>119</sup> The OECD has also prouced the Recommendation on Consumer Dispute Resolution and Redress.<sup>120</sup> All experts endorse the content of the relevant OECD Guideline. Several initiatives have been reported, especially online/offline dispute settlement websites (Argentina,<sup>121</sup> Brazil,<sup>122</sup> Colombia,<sup>123</sup>

<sup>114</sup> UNGCP 34: "Information on available redress and other dispute-resolving procedures should be made available to consumers."

<sup>115</sup> CI proposes amendment to this guideline to include clearness and simplicity, and that dispute resolution mechanisms be accessible to consumers.

<sup>116</sup> Argentina, Botswana.

<sup>117</sup> UNGCP 63: "Governments should, especially in a regional or sub-regional context: (a) Develop, review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection; (b) Cooperate or encourage cooperation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such cooperation could be collaboration in the setting up or joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint training programmes and joint elaboration of regulations; (c) Cooperate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and quality. Such cooperation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specifications."

<sup>118</sup> The OECD Guidelines that this questionnaire has linked to dispute settlement mechanisms state :

"Consumers should be provided meaningful access to fair and timely alternative dispute resolution and redress without undue cost or burden.

Businesses, consumer representatives and governments should work together to continue to use and develop fair, effective and transparent self-regulatory and other policies and procedures, including alternative dispute resolution mechanisms, to address consumer complaints and to resolve consumer disputes arising from business-to-consumer electronic commerce, with special attention to cross-border transactions:

- i) Businesses and consumer representatives should continue to establish fair, effective and transparent internal mechanisms to address and respond to consumer complaints and difficulties in a fair and timely manner and without undue cost or burden to the consumer. Consumers should be encouraged to take advantage of such mechanisms.
- ii) Businesses and consumer representatives should continue to establish co-operative self-regulatory programmes to address consumer complaints and to assist consumers in resolving disputes arising from business-to-consumer electronic commerce.
- iii) Businesses, consumer representatives and governments should work together to continue to provide consumers with the option of alternative dispute resolution mechanisms that provide effective resolution of the dispute in a fair and timely manner and without undue cost or burden to the consumer.
- iv) In implementing the above, businesses, consumer representatives and governments should employ information technologies innovatively and use them to enhance consumer awareness and freedom of choice."

<sup>119</sup> Fully incorporated: Belize, Chile, Colombia, Egypt, Honduras, Poland and South Africa; partially incorporated: Botswana, El Salvador, Hong Kong (China), Republic of Korea, Panama, and Switzerland; not incorporated: Brazil and Dominican Republic.

<sup>120</sup> Available at: [www.oecd.org/sti/consumer/38960101.pdf](http://www.oecd.org/sti/consumer/38960101.pdf)

<sup>121</sup> National Consumption Arbitration System.

<sup>122</sup> [consumidor.gov.br](http://consumidor.gov.br) - as a pilot project.

<sup>123</sup> Article 50, Estatuto del Consumidor L1480/2011: "Los proveedores deberán disponer en el mismo medio en que realizan comercio electrónico, de mecanismos para que el consumidor pueda radicar sus peticiones, quejas y la radicación, incluyendo un mecanismo para su posterior seguimiento." la Superintendencia de Industria y Comercio, en virtud de sus facultades administrativas de protección al consumidor, puede facilitar y propender por el desarrollo de mecanismos de solución de controversias en línea.

Mexico,<sup>124</sup> and Switzerland<sup>125</sup>). Some countries<sup>126</sup> allow for arbitration proceedings on this issue. Most national legislations also allow for ordinary judicial proceedings.<sup>127</sup> The United States encourages the development of self-regulatory programs that contain dispute resolution mechanisms that are easily accessible for consumers, such as some of the programs administered through the Advertising Self-Regulation Council.<sup>128</sup> Of the administrative measures that can be taken in this regard, it is noteworthy that Colombia foresees the possibility of imposing significant provisional measures (blocking access to webpages for an initial 30-day period while investigations proceed).<sup>129</sup> Experts believe there is need for the exchange of best practices and international cooperation<sup>130</sup> in this field. CI proposed new text on this issue.<sup>131</sup>

32. *Consumer education and awareness* in e-commerce was considered important by participants. Many experts<sup>132</sup> believe GLs 35 to 41<sup>133</sup> effectively address the issue of

<sup>124</sup> <http://concilianet.profeco.gob.mx/concilianet/faces/inicio.jsp>

<sup>125</sup> see: <https://www.konsum.admin.ch/fr/themes>.

<sup>126</sup> Chile, El Salvador, France, Mexico and Poland, as included in the Implementation Report of 2013, op. cit. 1. p. 17.

<sup>127</sup> Chile, Colombia, Costa Rica, El Salvador, France, Mexico, Poland as included in the Implementation Report of 2013, op. cit. 1. p. 17.

<sup>128</sup> Advertising Self-Regulatory Council, The Advertising Industry's Process Of Voluntary Self-Regulation 11 (Sept. 24, 2012), available at <http://www.ascreviews.org/wp-content/uploads/2012/10/NAD-CARU-NARB-Procedures-Updated-10-9-12.pdf>.

<sup>129</sup> Law 1489, article 54, as included in the Implementation Report of 2013, op. cit. 1. p. 17.

<sup>130</sup> Botswana, Burkina Faso, Costa Rica, Israel. On the contrary: Brazil.

<sup>131</sup> Proposed new text: Information on available redress and other dispute-resolving procedures should be made available to consumers, including via the Internet. Procedures should be clear and simple in a common language and be easily made available to consumers. The expertise of consumer organisations should be brought to bear in resolving consumer complaints through involvement in dispute resolution forums, both statutory and non-statutory. This participation can come either as adjudicators or as supervisory board members for specific dispute resolution schemes. Governments should ensure that information pertaining to the volume, frequency and nature of complaints in the various consumer sectors is collected, analysed and reported on a regular basis. Self-regulatory codes and dispute resolution schemes should publish their results company by company and corporate social responsibility reports likewise.

<sup>132</sup> Belize, Argentina, Botswana, El Salvador, , Republic of Korea,, Peru, South AfricaSwitzerland, Zambia, CI and NCOS-Japan.

<sup>133</sup> UNGCP 35: "Governments should develop or encourage the development of general consumer education and information programmes, including information on the environmental impacts of consumer choices and behaviour and the possible implications, including benefits and costs, of changes in consumption, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels. Consumer groups, business and other relevant organizations of civil society should be involved in these educational efforts."

UNGCP 36: "Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects."

UNGCP 37: "Consumer education and information programmes should cover such important aspects of consumer protection as the following:

- (a) Health, nutrition, prevention of food-borne diseases and food adulteration;
- (b) Product hazards;
- (c) Product labelling;
- (d) Relevant legislation, how to obtain redress, and agencies and organizations for consumer

education and awareness, although for some<sup>134</sup> new Guidelines may be needed.<sup>135</sup> The relevant OECD Guidelines<sup>136</sup> are unanimously endorsed. There is a wide array of national initiatives in this field, in particular 'e-education' campaigns.<sup>137</sup> Israel initiated a T.V. campaign dealing with different consumer issues, including e-commerce, in order to empower consumers and raise their awareness regarding their rights., while the United States offers education resources such as a consumer-oriented and business-oriented webpages<sup>138</sup>

33. On the issue of *data protection and privacy*, half of participants believe new guidelines are needed,<sup>139</sup> and favoured their inclusion<sup>140</sup> in a revised UNGCP. Israel notes that data protection falls within the jurisdiction of another national authority. South Africa believes high penalties should be imposed for breaches of data protection law. As included

protection;

(e) Information on weights and measures, prices, quality, credit conditions and availability of basic necessities;

(f) Environmental protection; and

(g) Efficient use of materials, energy and water."

UNGCP 38: "Governments 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."

UNGCP 39: "Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes."

UNGCP 40: "Bearing in mind the need to reach rural consumers and illiterate consumers, Governments should, as appropriate, develop or encourage the development of consumer information programmes in the mass media."

UNGCP 41: "Governments should organize or encourage training programmes for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer information and education programmes."

<sup>134</sup> Colombia, Egypt, El Salvador, Trinidad and Tobago, and CI.

<sup>135</sup> Brazil, Chile, CI, Costa Rica, Honduras and MGP-India.

<sup>136</sup> The OECD Guidelines that this questionnaire has linked to consumer education read:

"Governments, businesses and consumer representatives should work together to educate consumers about electronic commerce, to foster informed decision making by consumers participating in electronic commerce, and to increase business and consumer awareness of the consumer protection framework that applies to their online activities.

Governments, business, the media, educational institutions and consumer representatives should make use of all effective means to educate consumers and businesses, including innovative techniques made possible by global networks.

Governments, consumer representatives and businesses should work together to provide information to consumers and businesses globally about relevant consumer protection laws and remedies in an easily accessible and understandable form."

<sup>137</sup> Chile, the European Union and Poland, as included in the Implementation Report of 2013, op. cit. 1. p. 17.

<sup>138</sup> <http://www.consumer.ftc.gov>: provides a plain-language resource with information about relevant consumer issues and concerns regarding money and credit, homes and mortgages, health and fitness, jobs and making money, and privacy and identity; <http://www.OnGuardOnline.gov>: provides education about a number of issues including identity theft, Internet auctions, children's privacy, online shopping, and social networking, with contributions from public and private sector partners

<sup>139</sup> Please note that the issue of data protection is being dealt in the Working Group on 'Other Issues'.

<sup>140</sup> Belize, Argentina, Botswana, Burkina Faso, Chile, Colombia, Dominican Republic, Egypt, El Salvador, Hong Kong (China), Honduras, MGP-India, South Africa, Switzerland, , Trinidad and Tobago, Uruguay, CI, NCOS-Japan, and University of New Delhi.

in the UNCTAD *Implementation Report* of 2013,<sup>141</sup> Morocco has enacted laws relating to personal and electronic data exchange;<sup>142</sup> while the United States has brought hundreds of law enforcement actions related to all aspects of privacy and data security and set forth a framework for the protection of consumer privacy.<sup>143</sup> As reported in the UNCTAD Note,<sup>144</sup> ECOWAS has produced a regional framework for the protection of personal data in e-legislation,<sup>145</sup> which has been transposed in Senegal and Côte d'Ivoire. The United States opposes the development of any new guidelines on data protection and privacy in any revised UNGCP in light of ongoing international discussions on this topic in a number of international contexts. It points to the OECD Guidelines Governing the Protection of Privacy and Trans border Flows of Personal Data of 1980 (updated in 2012) as the global standard in this area.<sup>146</sup> ICC notes its Code includes provisions relating to data protection and privacy.<sup>147</sup>

34. On the issue of *applicable law and jurisdiction* to e-commerce, considered it moderately important. The majority of jurisdictions<sup>148</sup> have (at least partially) incorporated the proposed OECD Guidelines for this issue<sup>149</sup> in their domestic legislation, and all respondents endorse them. Several respondents have asked for the creation of expert groups

<sup>141</sup> Op. cit. 1, p. 17.

<sup>142</sup> Law No. 09-08, Law No. 53-05.

<sup>143</sup> See, e.g., Federal Trade Commission Report, "Protecting Consumer Privacy in an Era of Rapid Change", available at <http://www.ftc.gov/os/2012/02/120326privacyreport.pdf>. See also Fed. Trade Comm'n, 2014 Privacy and Data Security Update (June 2014), available at <http://www.ftc.gov/reports/privacy-data-security-update-2014>. The United States notes that its enforcement and policy work in this regard pursuant to its general authority to prohibit unfair and deceptive practices, as well as other sector-specific laws relating to privacy such as the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §§ 6501-6506; the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §1681-1681x, involving consumer credit information; and the Gramm-Leach-Bliley ("GLB") Act, 15 U.S.C. § 6801 et seq., involving financial information; and its "do-not-call" laws under the Telemarketing Sales Rule. Under the Telemarketing Sales Rule, the FTC has recently brought actions in the context of "robocalls." "FAQ: The Telemarketing Sales Rule" <http://www.consumer.ftc.gov/articles/0198-telemarketing-sales-rule>. See also Fed. Trade Comm'n Press Release <http://www.ftc.gov/news-events/press-releases/2014/04/marketer-robocalling-services-banned-telemarketing>

<sup>144</sup> Op. cit., 80.

<sup>145</sup> ECOWAS, Supplementary Act A/SA.1/01/10.

<sup>146</sup> OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (July 2013), available at <http://www.oecd.org/sti/ieconomy/2013-oecd-privacy-guidelines.pdf>

<sup>147</sup> ICC Code (op.cit., 30) Article 19-Data protection and privacy.

<sup>148</sup> Fully incorporated: Belize, Colombia, Egypt, El Salvador, Hong Kong (China), France, Israel, Peru, Poland, South Africa, Tunisia and United States; partially incorporated: Botswana, Brazil, Burkina Faso, Dominican Republic, Republic of Korea, Switzerland and Trinidad and Tobago.

<sup>149</sup> The OECD Guidelines that this questionnaire has linked to applicable law state: "Business-to-consumer cross-border transactions, whether carried out electronically or otherwise, are subject to the existing framework on applicable law and jurisdiction.

Electronic commerce poses challenges to this existing framework. Therefore, consideration should be given to whether the existing framework for applicable law and jurisdiction should be modified, or applied differently, to ensure effective and transparent consumer protection in the context of the continued growth of electronic commerce.

In considering whether to modify the existing framework, governments should seek to ensure that the framework provides fairness to consumers and businesses, facilitates electronic commerce, results in consumers having a level of protection not less than that afforded in other forms of commerce, and provides consumers with meaningful access to fair and timely dispute resolution and redress without undue cost or burden."

and workshops to discuss this issue.<sup>150</sup> The United States opposes such work<sup>151</sup> and emphasises the need to develop mechanisms for mutual enforcement cooperation and participation in global enforcement networks. ICC recommends applicable law should be implemented in the context of self-regulation, although it advises marketers to familiarise themselves with the rules and regulations of the various relevant jurisdictions. CI highlights the need for efforts to be made to advance towards bilateral, regional and international frameworks (treaties, conventions, etc.) on consumer protection.

35. *Bilateral, regional and international cooperation* has been deemed necessary by all experts. Although some feel the need for new guidelines, many experts<sup>152</sup> note that GLs 63 to 69<sup>153</sup> could effectively deal with this issue. The OECD Guidelines<sup>154</sup> have been widely

<sup>150</sup> Hong Kong (China), Poland, and South Africa.

<sup>151</sup> United States highlights failed attempts to resolve this issue internationally in venues such as the Hague Conference on Private International Law

<sup>152</sup> Belize, Botswana, Chile, Egypt, El Salvador, Peru, Switzerland, Trinidad and Tobago, Zambia, CI and NCOS-Japan.

<sup>153</sup> UNGCP 63: "Governments should, especially in a regional or sub-regional context: (a) Develop, review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection; (b) Cooperate or encourage cooperation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such cooperation could be collaboration in the setting up or joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint training programmes and joint elaboration of regulations; (c) Cooperate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and quality. Such cooperation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specifications."

UNGCP 64: "Governments should develop or strengthen information links regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products."

UNGCP 65: "Governments should work to ensure that the quality of products, and information relating to such products, does not vary from country to country in a way that would have detrimental effects on consumers."

UNGCP 66: "To promote sustainable consumption, Governments, international bodies and business should work together to develop, transfer and disseminate environmentally sound technologies, including through appropriate financial support from developed countries, and to devise new and innovative mechanisms for financing their transfer among all countries, in particular to and among developing countries and countries with economies in transition."

UNGCP 67: "Governments and international organizations, as appropriate, should promote and facilitate capacity-building in the area of sustainable consumption, particularly in developing countries and countries with economies in transition. In particular, Governments should also facilitate cooperation among consumer groups and other relevant organizations of civil society, with the aim of strengthening capacity in this area."

UNGCP 68: "Governments and international bodies, as appropriate, should promote programmes relating to consumer education and information."

UNGCP 69: "Governments should work to ensure that policies and measures for consumer protection are implemented with due regard to their not becoming barriers to international trade, and that they are consistent with international trade obligations."

<sup>154</sup> The OECD Guidelines that this questionnaire has linked to bilateral, regional and international cooperation are:

"In order to provide effective consumer protection in the context of global electronic commerce, Member countries should i) facilitate communication, co-operation, and, where appropriate, the development and enforcement of joint initiatives at the international level among businesses, consumer representatives and governments, and ii) through their judicial, regulatory and law enforcement authorities co-operate at the international level, as appropriate, through information exchange, co-ordination, communication and joint action to combat cross-border fraudulent, misleading and unfair commercial conduct."

implemented.<sup>155</sup> Chile and Hong Kong (China) stress the importance of existing<sup>156</sup> or potential bilateral agreements. Some experts call for the creation of ad hoc committees and expert groups to discuss consumer issues at a global level.<sup>157</sup> ECOWAS has also undertaken efforts towards regional harmonisation of law.<sup>158</sup> There are also interesting private sector initiatives.<sup>159</sup> The responses received for the UNCTAD *Implementation Report* of 2013, demonstrate consensus on the need to establish and enforce international standards, including neutral networks, and enhance international cooperation. Further, international rules are required not only for electronic trade, but also remote trade (especially in relation to law applicable to cross-border transactions).<sup>160</sup> The United States believes the UNGCP could be expanded on this point and referred to the OECD's 2003 Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders, which expanded upon the 1999 E-commerce Guidelines by setting forth broad principles for international co-operation and specific provisions covering notification, information sharing, and assistance with investigations.

36. The questionnaire allowed the opportunity for experts to share their additional views on other issues related to e-commerce. CI reiterated the proposal to include 'open and interoperable standards'<sup>161</sup> and 'offering of digital products in equal terms to those sold in other formats'<sup>162</sup> in any revised UNGCP. The United States, in this respect, noted the work

iii) Make use of existing international networks and enter into bilateral and/or multilateral agreements or other arrangements as necessary and appropriate, to accomplish such co-operation.

iv) Work toward building consensus, both at the national and international levels, on core consumer protections to further the goals of enhancing consumer confidence, ensuring predictability for businesses, and protecting consumers.

v) Co-operate and work towards developing agreements or other arrangements for the mutual recognition and enforcement of judgments resulting from disputes between consumers and businesses, and judgments resulting from law enforcement actions taken to combat fraudulent, misleading or unfair commercial conduct."

<sup>155</sup> Fully incorporated: Belize, Colombia, Egypt, El Salvador, France, Israel, Republic of Korea, Poland, South Africa, Switzerland and United States; partially incorporated: Brazil, Dominican Republic, Hong Kong (China), Panama and Switzerland.

<sup>156</sup> Chile (agreement with Peru). The United States has entered into memoranda of understanding and bilateral agreements with various consumer protection authorities, a list of which can be found at <http://www.ftc.gov/policy/international/international-cooperation-agreements>.

<sup>157</sup> Poland and South Africa. The United States reports taking part in the following enforcement and policy networks: Consumer Policy Committee of the OECD, Working Party on Information Security and Privacy of the OECD, the APEC Electronic Commerce Steering Group and its Data Privacy Subgroup, the APEC Telecommunication and Information Working Group; and the econsumer.gov's project of the International Consumer Protection and Enforcement Network ("ICPEN").

<sup>158</sup> Op. cit. 80, p. 5

<sup>159</sup> ICC suggests looking at initiatives through the European Advertising Standards Alliance and the European Digital Advertising Alliance on Online Behavioral Advertising as well as the CONARED network of Latin American self-regulatory bodies and the APEC Advertising Standards project.

<sup>160</sup> Op. cit., 1, p. 17

<sup>161</sup> Proposal to include: " Governments, business and consumer representatives should work together to educate consumers about electronic commerce, to foster informed decision-making by consumers participating in electronic commerce, and to increase business and consumer awareness of the consumer protection framework that applies to their online activities. Governments and businesses should be further guided by the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (2001)." (proposed article 72, CI proposal for amendments to the UN Guidelines for Consumer Protection, (2013).

<sup>162</sup> Proposal to include: "Governments should restrict suppliers of digital content products and services from employing technologies that have a significant effect of preventing consumers from using those products or services in ways that would otherwise be reasonable, lawful and safe. These include any network locking technologies that restrict the use of devices to particular operator networks. In the case of products that are sold or later supplied with software that is required for their normal operation, the

of the OECD Committee on Consumer Policy on a policy instrument on consumer protection for digital content transactions, which will be finalized shortly.

37. The main findings of the Working Group on E-commerce are:
- Participants in this Working Group have expressed their interest in revising the UNGCP to incorporate e-commerce and its dependant issues;
  - Submissions to this work have shown wide support for the 1999 OECD Guidelines by both OECD and non OECD member States.

### III. B. Financial Services

38. The Working Group on Financial Services is chaired by Sothi Rachagan, Commissioner at Competition Commission of Malaysia.

39. This Working Group acknowledged the findings of the Financial Services section of the UNCTAD *Implementation Report* of 2013.<sup>163</sup> This report outlines the consumer protection frameworks in the financial services sectors of respondent member States. It states that in many countries, due to phenomenal growth in access to financial services, consumer protection agencies have devoted substantial resources to addressing consumer concerns and that most respondent countries have enacted laws and regulations relating to consumer protection and financial services; either in consumer protection laws,<sup>164</sup> or (more importantly) in specialised laws.<sup>165</sup> The report notes that some countries have responded to the changing structure of financial services by enacting new legislation that incorporates

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consumer's use of such software cannot be taken as a waiver of the right to use the product as expressed above, nor as consent to the removal of any functionality that the product possessed at the time of purchase." (proposed article 27, *ibid*).

"Standard provisions in non-negotiated product licenses should not prevent consumers from exercising the limitations and exceptions recognized in domestic intellectual property laws." (proposed article 28, *ibid*).

"Digital content products should be offered on terms equivalent to those sold in other formats, unless the consumer is clearly informed that different terms apply. This includes the normal incidences of product ownership, such as permanent possession, privacy of use, the ability to gift or resell such goods together with all of the rights with which they were first sold, and the ability to lend or perform them within a family, household or similar limited circle. To the extent required to facilitate these uses of such works, and to allow the consumer to access them at a convenient time and place, governments should allow consumers to time, space and format shift digital content products, to make temporary copies of them, and to bypass technical protection measures applied to them. Hindrance of the exercise of these rights should be prohibited by law. Where possible, consumers should have the opportunity to try a digital content product before final purchase." (proposed article 70, *ibid*).

Governments and industry should support, use and contribute to the development of open and interoperable standards for digital content products supplied to or hosted for consumers. Suppliers who provide a service to host such products online (other than a content streaming service) should also provide the means for consumers to extract them from online storage by that supplier, using open formats and protocols." (proposed article 71, *ibid*).

<sup>163</sup> Op cit. 1, p. 17

<sup>164</sup> Chile (Ley Número 20.555); El Salvador (Ley de Protección al Consumidor (LPC) (Art. 12-22)); Hungary (Act XLVII. of 2008, Art 10 (2) and (3)); Mexico (LFPC); Russia (Law on Consumers Rights Protection, Art.26.1); Tanzania (FCA 2003); Tunisia (Loi N°92-117 relative à la protection du consommateur); US( FTC Title 16 Commercial Practices Guide, 16.C.F.R. Chapter I, Subchapter B-- Guides and Trade Practice Rules, Part 313).

<sup>165</sup> Colombia; Costa Rica, Dominican Republic; El Salvador; Mexico; Peru; Poland and Portugal.

consumer protection.<sup>166</sup> Lastly, the report acknowledges a growing number of national regulations on the issue of financial services,<sup>167</sup> with very detailed rights and obligations for service providers and consumers.

40. As per the recommendations of the experts attending the Second Ad Hoc Expert Group Meeting on Consumer Protection, held between 11 and 12 July 2013, the Working Group agreed to build on the results of the G20 process - basing its work on the OECD G20 High-level Principles on Financial Consumer Protection.<sup>168</sup> These guidelines have been developed by the OECD at the request of the G20 Finance Ministers and Central Bank Governors and were endorsed by the latter in November 2011. To this end, the Working Group has used the OECD High-level Principles as the starting point for the questionnaire, created in conjunction with the UNCTAD secretariat.

41. The Working Group disseminated the questionnaire in a call for contributions from member States and other relevant stakeholders on 14 March 2014.

42. The issues raised in the questionnaire of this Working Group are as follows: (i) legal, regulatory and supervisory frameworks, (ii) role of oversight bodies, (iii) equitable and fair treatment of consumers, (iv) disclosure and transparency, (v) financial education and awareness, (vi) responsible business conduct, (vii) protection of consumer assets, (viii) data protection and privacy, (ix) consumer redress, (x) competition, (xi) compensation schemes and (xii) remittances.

43. The questionnaire required participants to respond to several questions relating to the issues raised above, namely: (i) pertinence of including the issue in the discussions of the Working Group; (ii) importance of the issue; (iii) ability of the current UNGCP in addressing the issue; (iii) need for additional UNGCP; (iv) existence of adequate national or regional rules/policies; (v) compliance with relevant OECD High-level Principles; (vi) endorsement of relevant OECD Guidelines; (vi) capacities needed for adequate regulation/implementation; (vii) need for cross-border cooperation; and (viii) further comments (open to additional participants' comments).

44. So far, the Working Group received 33 contributions, including submissions from the following member States: Argentina, Belize, Benin, Brazil, Chile, Colombia, Democratic Republic of Congo, Egypt, France, , Honduras, Israel, Japan, Malaysia,

<sup>166</sup> Indonesia; Tanzania; United Kingdom and United States.

<sup>167</sup> Chile (Decreto 41 de 2012, Ministerio de Economía <http://www.leychile.cl/Navegar?idNorma=1041742&buscar=sello+sernac>, Decreto 42 de 2012, Ministerio de Economía <http://www.leychile.cl/Navegar?idNorma=1041743&buscar=sello+sernac>, Decreto 43 de 2012, Ministerio de Economía <http://www.leychile.cl/Navegar?idNorma=1041744&buscar=sello+sernac>, Decreto 44 de 2012, Ministerio de Economía <http://www.leychile.cl/Navegar?idNorma=1041745&buscar=sello+sernac>); Costa Rica (Reglamento de Tarjetas de Crédito y Débito (Decreto N°35867-MEIC); Indonesia (Bank Indonesia Regulation No. 7/6/2005 concerning Transparency in bank product information and use of customer personal data, [http://www.bi.go.id/NR/rdonlyres/BB45356B-5C65-4E57-94B7-D50482D9C732/13123/pbi7605\\_eng.pdf](http://www.bi.go.id/NR/rdonlyres/BB45356B-5C65-4E57-94B7-D50482D9C732/13123/pbi7605_eng.pdf), Bank Indonesia Regulation No. 7/7/PBI/2005 concerning Resolution of Customer Complaints, <http://www.bi.go.id/NR/rdonlyres/FA589889-D303-4419-92E5-A821229D2C1B/13125/pbi7705.pdf>).

<sup>168</sup> OECD, G20 High-level Guidelines on Financial Consumer Protection, 10/2011 (hereafter: OECD High-level Principles) ; (<http://www.oecd.org/daf/fin/financial-markets/48892010.pdf> accessed: 17/07/2014)

Nicaragua, Panama, Peru, Portugal, Republic of Korea, Seychelles, South Africa,<sup>169</sup> Switzerland, Tunisia, the United States of America<sup>170</sup> and Zambia. Other submissions came from the European Union (EU), the Consumer Association of India (CAI), CI, Hong Kong (China), MGP, Nippon Consumers for Better Standards, the Spanish Association of Banks and Insurance (ADICAE) and the University of New Delhi. ICC submitted general policy briefings outlining their position on the state and policy priorities for consumer protection in financial services.<sup>171</sup>

45. With regards to the *legal and regulatory framework*<sup>172,173,174</sup> respondents expressed wide support for the OECD High-level Principles and assigned a very high relevance to regulatory and framework issues. Most respondents do not regard the provisions of the current UNGCP on the legal and regulatory framework of financial consumer protection as sufficient,<sup>175</sup> and many countries believe that their domestic legislation reflects the OECD High-level Principles at least in part. A number of respondents<sup>176</sup> emphasised the need for cross border cooperation regarding mechanisms to protect consumers against fraud. The vast majority of respondents<sup>177</sup> attached the highest level of importance to the two issues raised outside of the OECD High-level Principles: (i) development of legal frameworks to influence the structure of financial service providers (FSPs), ensuring transparency of

<sup>169</sup> South Africa National Consumer Tribunal

<sup>170</sup> The United States reiterates that it has characterized its submission as “informal” and that its questionnaire response is intended for the sole purpose of providing information to the working groups regarding the current status of law in the United States. It cannot be considered to represent the views of the Federal Trade Commission as a whole or any individual commissioner or any other United States agency. Nonetheless, the views expressed in the questionnaire should be considered in any assessment of the preferences of the working group. The United States emphasizes that the OECD is currently in the process of working on an informal consultation in support of implementation of various G20/OECD high level principles regarding financial consumer protection. This document contains six topics that are the same as those identified in the questionnaire, namely: Legal, Regulatory and Supervisory Framework; Role of Oversight Bodies; Equitable and Fair Treatment of Consumers; Protection of Consumer Assets against Fraud and Misuse; Protection of Consumer Data and Privacy; and Competition. See Draft Text for “Effective Approaches to Support the Implementation of the remaining G20 High-Level Principles of Financial Consumer Protection” (circulated for informal consultation between 8 and 30 May 2014), available at <http://www.oecd.org/daf/fin/financial-education/FCP-Effective-Approaches-2014.pdf>. Consequently, the United States considers that it may be premature to propose new guidelines on financial services as part of the UNGCP until the OECD implementation work is completed.

<sup>171</sup> As such, the term ‘respondents’, when used in the paragraphs of this section of the report to express views submitted via the questionnaire, does not include either the United States or ICC.

<sup>172</sup> Section 1 (1.1 to 1.8) of the questionnaire addresses the role of the legal, regulatory and supervisory framework needed for an effective consumer protection regime in financial services.

<sup>173</sup> Subjects of the consultation were, inter alia, the state of the law with regards to consumer protection, fraud, the professional regulation of financial service providers (FSPs) and stakeholder participation in the formulation of consumer protection policies.

<sup>174</sup> OECD High-level Principles (Nr.1) hold that a strong regulatory regime that reflects the characteristics of the national legal and regulatory environment, whilst safeguarding strong individual protection against fraud and misleading business practices with a clear set of sector specific regulation and mandatory licensing for FSP`s.

<sup>175</sup> Argentina believes that section 1.1 of the questionnaire, appropriate financial consumer protection regulations reflecting diversities and developments across and within financial markets, is sufficiently covered within section B of the UNGCP.

<sup>176</sup> Argentina, Benin, Chile, CAI, Egypt, Portugal, Switzerland, Tunisia, University of New Delhi, and the United States.

<sup>177</sup> Japan accords low priorities to these issues, noting that diversity of FSPs and that the requirement for licensing should be the basis on business models. Chile also states that not all financial service providers in Chile need a license to operate but assigns high relevance to this issue. Benin and Republic of Korea affords the issues medium to high importance. Tunisia gives high (4) to very high (5) importance to these issues. Panama gives high importance (4) to both issues.

purpose, objectives and functions and (ii) development of licences for all financial services providers, supervised by oversight bodies.

46. As concerns *the role of supervisory bodies*<sup>178,179</sup> all respondents except one agreed<sup>180</sup> with the OECD High-level Principles and favour strong and, above all clearly, mandated authorities. The relevance assigned to issues within this section varies greatly across respondents. With six exceptions,<sup>181</sup> respondents attached the highest level of importance to the issue raised outside of the OECD High-level Principles: oversight bodies should publish analyses of their actions and suggest reforms to avoid systematic problems.

47. On the issues of the underlying framework and the role of supervisory bodies, the UNCTAD *Implementation Report* of 2013 notes that many countries have established specialised bodies either within the consumer protection agencies (Chile,<sup>182</sup> Colombia,<sup>183</sup> Costa Rica),<sup>184</sup> or independently (Dominican Republic,<sup>185</sup> France,<sup>186</sup> Hungary,<sup>187</sup> India,<sup>188</sup> Indonesia,<sup>189</sup> Mexico,<sup>190</sup> Poland,<sup>191</sup> Tunisia,<sup>192</sup> and the United Kingdom<sup>193</sup>). In other countries, such as the United States, consumer protection laws in the financial services area may be enforced by multiple agencies, including general consumer protection authorities, specialized agencies and financial services regulators.<sup>194</sup> In all cases, agencies have performed various roles, such as: producing quality seals;<sup>195</sup> mandating financial institutions to provide an in-house “consumer ombudsman”;<sup>196</sup> providing financial

<sup>178</sup> Section 2 (2.1 - 2.6) of the questionnaire addresses the role of supervisory bodies.

<sup>179</sup> OECD High-level Principles (Nr.2) consider that national oversight authorities, regardless of whether they are part of a financial services regulator or a consumer protection agency, should have a clear mandate and adequate resources to discharge their role effectively. In the field of financial services, there should also be close cooperation with sector regulators.

<sup>180</sup> Republic of Congo does not believe that any of the issues in this section issue should be included in discussions.

<sup>181</sup> Japan, Portugal, South Africa and University of New Delhi accorded importance of 2, 3, 3 and 4 respectively. Republic of Korea and Republic of Congo do not believe that this issue should be included in discussions.

<sup>182</sup> SERNAC Financiero.

<sup>183</sup> Superintendencia Financiera SIC

<sup>184</sup> Superintendencia de Entidades Financieras DAC

<sup>185</sup> Superintendencia de Bancos y la Junta Monetaria Nacional.

<sup>186</sup> The powers over financial institutions are shared between the DRCCRF (consumer protection agency) and the independent Autorité de contrôle prudentiel et de resolution.

<sup>187</sup> Hungarian Financial Supervisory Authority.

<sup>188</sup> Securities and Exchange Board of India (SEBI), Pension Fund Regulatory and Development Authority (PFRDA).

<sup>189</sup> Financial Services Authority.

<sup>190</sup> Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros.

<sup>191</sup> Financial Supervision Commission, however the President of the Office of Competition and Consumer Protection also protects consumer in the financial services sector the same way as in all other market sectors.

<sup>192</sup> Conseil du marché financier.

<sup>193</sup> As of April 2013, the United Kingdom Financial Services Authority was replaced by the Financial Conduct Authority and the Prudential Regulation Authority; the former having a consumer protection remit in relation to the Financial Services Industry. In April 2014, responsibility for the consumer credit market was transferred by the United Kingdom Government to the FCA from the OFT.

<sup>194</sup> Consumer protection for financial services in the United States is shared by multiple agencies, principal among which are the Federal Trade Commission, which has general authority for consumer protection matters including enforcement authority in the context of various financial services; the Consumer Financial Protection Bureau; and the Department of the Treasury. Consumer Financial Protection Bureau within the Federal Reserve Board.

<sup>195</sup> Chile (Sello SERNAC).

<sup>196</sup> Colombia (Las entidades financieras vigiladas deberán contar con un Defensor del Consumidor Financiero orientado a la protección especial de los consumidores financieros, resolver en forma objetiva y gratuita para los consumidores, las quejas que estos le presenten, actuar como conciliador entre los consumidores financieros y la respectiva entidad y Efectuar recomendaciones a la entidad vigilada relacionadas con los servicios y la atención al consumidor financiero. Las decisiones que adopte el Defensor del

ombudsman,<sup>197</sup> hosting workshops,<sup>198</sup> conducting education campaigns (even by financial institutions),<sup>199</sup> and providing advisory services.<sup>200</sup> The UNCTAD *Implementation* report of 2013 shows most national authorities provide alternative dispute settlement mechanisms<sup>201</sup> (mediation, conciliation, and arbitration).

48. With regards to the *fair and equitable treatment of consumers*<sup>202,203</sup> respondents largely assigned the highest relevance to this issue.<sup>204</sup> Some member States recognised the existing UNGCP as addressing these issues<sup>205</sup> but nearly all call for new Guidelines applicable to financial services.<sup>206</sup> Several respondents<sup>207</sup> suggested further research to better understand and define vulnerable consumers and their particular protective need with

Consumidor Financiero serán obligatorias cuando los consumidores y las entidades así lo acuerden de manera previa y expresa. Igualmente, serán obligatorias para las entidades vigiladas las decisiones del Defensor del Consumidor Financiero, cuando las entidades así lo hayan previsto en sus reglamentos).

<sup>197</sup> United Kingdom (<http://financial-ombudsman.org.uk/about/index.html>).

<sup>198</sup> USFTC has hosted roundtables focusing on debt collection practices (FTC Press Release, Federal Trade Commission, Consumer Financial Protection Bureau to Co-Host Roundtable on Data Integrity in Debt Collection (May 2013), <http://www.ftc.gov/news-events/press-releases/2013/05/federal-trade-commission-consumer-financial-protection-bureau-co->), mobile payments and cramming (FTC Press Release, FTC Announces Agenda, Panelists for Upcoming Mobile Cramming Roundtable (May 2013), <http://www.ftc.gov/news-events/press-releases/2013/05/ftc-announces-agenda-panelists-upcoming-mobile-cramming>; FTC Press Release, Paper, Plastic or Mobile? An FTC Workshop on Mobile Payments (Apr. 2012), <http://www.ftc.gov/news-events/press-releases/2012/04/paper-plastic-or-mobile-ftc-workshop-mobile-payments>), financing of auto loans (FTC Press Release, FTC to Hold Third Roundtable to Address Consumer Issues in Motor Vehicle Sales, Financing & Leasing (Nov. 2011), <http://www.ftc.gov/news-events/press-releases/2011/11/ftc-hold-third-roundtable-address-consumer-issues-motor-vehicle> (announcing “The Road Ahead: Selling, Financing and Leasing Motor Vehicles” events on Apr. 12, 2011, Aug. 2-3, 2011 & Nov. 17-18, 2011) and the role of money transfer services in facilitating fraud (FTC Press Release, FTC to Host Workshop on Protecting Consumers From Lottery, Prize, and Sweepstakes Scams and Other Frauds that Use Money Transfers (Mar. 2011), <http://www.ftc.gov/news-events/press-releases/2011/03/ftc-host-workshop-protecting-consumers-lottery-prize-and>).

<sup>199</sup> Colombia (las entidades financieras tienen la obligación de desarrollar programas y campañas de educación financiera a sus clientes sobre los diferentes productos y servicios que prestan, obligaciones y derechos de estos y los costos de los productos y servicios que prestan, mercados y tipo de entidades vigiladas, así como de los diferentes mecanismos establecidos para la protección de sus derechos, según las instrucciones que para el efecto imparta la Superintendencia Financiera de Colombia); Mexico (de conformidad con el artículo 5° de la Ley de Protección y Defensa al Usuario de Servicios Financieros, la CONDUSEF tiene la atribución de realizar programas educativos en materia financiera; cuyo contenido se puede conocer en: <http://www.condusef.gob.mx/index.php/material-educativo>); Poland (The campaign “Don’t be cheated. Check before you sign” was aimed at attracting public attention to the risks involved in entering into financial agreements, with an emphasis on taking short-term loans at high rates, the so-called payday loans, and using financial services which are not subject to the special state control. This campaign is being organized jointly by seven public institutions: Bank Guarantee Fund (pl. BFG), Polish Financial Supervision Authority (pl. KNF), Ministry of Finance (pl. MF), Ministry of Justice (pl. MS), National Bank of Poland (pl. NBP), Police and the Office of Competition and Consumer Protection (UOKiK))

<sup>200</sup> Mexico (CONDUSEF); United Kingdom (<https://www.moneyadvice.service.org.uk/en/static/about-us>), US (<http://www.consumer.ftc.gov/>).

<sup>201</sup> Colombia (Las entidades financieras vigiladas deberán contar con un Defensor del Consumidor Financiero orientado a la protección especial de los consumidores financieros, resolver en forma objetiva y gratuita para los consumidores, las quejas que estos le presenten, actuar como conciliador entre los consumidores financieros y la respectiva entidad y Efectuar recomendaciones a la entidad vigilada relacionadas con los servicios y la atención al consumidor financiero. Las decisiones que adopte el Defensor del Consumidor Financiero serán obligatorias cuando los consumidores y las entidades así lo acuerden de manera previa y expresa. Igualmente, serán obligatorias para las entidades vigiladas las decisiones del Defensor del Consumidor Financiero, cuando las entidades así lo hayan previsto en sus reglamentos).

<sup>202</sup> Section 3 (3.1 - 3.3) explores national legislation on the fair and equitable treatment of consumers.

<sup>203</sup> OECD High-level Principles (Nr.3) identify the fair and equitable treatment of consumers, with special consideration of vulnerable consumer groups, as a central element to financial consumer protection regime.

<sup>204</sup> Japan accords a relevance of 2 to this section.

<sup>205</sup> Argentina, Chile, Honduras, Peru and the United States. Sections B-22, F-35 and F-38 are cited. Panama and Peru believe that UNGCP does address consumers' right to equitable and fair treatment but not vulnerable consumer groups.

<sup>206</sup> With the exception of Argentina and Panama.

<sup>207</sup> European Union (EU), India, Hong Kong (China),.

regards to financial services, whilst the sharing of best practices between jurisdictions was highlighted<sup>208</sup> as important for inspiring action. Some respondents<sup>209</sup> called for the establishment of voluntary business codes in this area. All respondents endorsed the relevant OECD High-level Principles in this area.

49. On issues surrounding *disclosure and transparency*<sup>210</sup> obligations of key information pertaining to a particular contract, with only two exceptions<sup>211</sup> member States and stakeholders believed that the issue is both important and relevant to improving consumer protection in financial services. Some respondents highlighted areas of the existing UNGCP that were felt addressed these issues<sup>212</sup> and all but two respondents called for new guidelines for these issues.<sup>213</sup> Once again, all respondents endorsed the relevant OECD High-level Principles in this area and some forwarded a variety of suggestions including mandatory information requirements, development of minimum standards of transparency<sup>214</sup>, monitoring, disclosure of standardised information at defined stages of the negotiations<sup>215</sup> and "clear language" requirements.<sup>216</sup> Of the issues listed outside of the OECD High-level Principles,<sup>217</sup> the vast majority<sup>218</sup> of respondents recognised a need for new guidelines for these issues.

50. With regards to *financial (consumer) education and awareness*<sup>219,220</sup> respondents overwhelmingly called for new guidelines on the issues previously addressed by OECD High-level Principles in this area,<sup>221</sup> which were unanimously endorsed. Participants illustrated this with examples from their own jurisdictions: the inclusion of financial literacy in the national curriculum;<sup>222</sup> dedicated financial literacy commission;<sup>223</sup> special

<sup>208</sup> France and Portugal. France reports having enacted legislation in July 2013 which guarantees access of all consumers to a banking account and to free basic services. Moreover, banking charges are capped.

<sup>209</sup> For example, Belize

<sup>210</sup> Section 4 (4.1 - 4.9) of the consultation deals with financial transparency issues. The section seeks to establish participants' views on disclosure and transparency with regards to key information allowing the consumer to assess the fundamental risks associated to the product and contractual terms governing the transaction.

<sup>211</sup> Japan rated most issues in this section as low relevance. Panama rated two issues (4.4 and 4.5) relevance of 2 and 1 respectively.

<sup>212</sup> Sections B-22,23, E-34,F-35 and G39 are cited.

<sup>213</sup> Argentina opposed new guidelines concerning the right to fundamental, accurate and honest product information (4.1). Panama believes that most issues in this section (4.1 to 4.5) do not require new guidelines.

<sup>214</sup> ADICAE

<sup>215</sup> University of New Delhi

<sup>216</sup> Singapore

<sup>217</sup> Issues (4.6 – 4.9): Adoption of the use of plain language in information produced for consumers; Guidelines on publication of minimum types of information for each financial service or product; Requirement of financial service providers to disclose how they are regulated and by which body; and Financial services providers should provide clients with regular updates on the performance of products and services.

<sup>218</sup> With the exception of Japan, Panama and the United States.

<sup>219</sup> Section 5 (5.1 - 5.9) of the consultation deals with financial consumer education and (risk) awareness. The section seeks to establish the existence and scope of financial education awareness initiatives.

<sup>220</sup> OECD High-level Principles (Nr. 5) consider that the remuneration practices of FSPs and incentives given to their agents can produce a considerable impact on sales. OECD High-level Principles state that, in this regard, (1) FSPs should be obligated to consider the interests and capabilities of the consumers when making sales recommendations and (2) the remuneration structures of FSPs remuneration structure should reflect the quality of client advice.

<sup>221</sup> With the exception of Argentina, citing some issues (5.1, 5.4 and 5.5) as already being sufficiently covered within section F of the existing UNGCP. The United States considers that it is premature to determine whether recommendations should be made as to possible revision of the UNGCP in this regard.

<sup>222</sup> Singapore, University of New Delhi

<sup>223</sup> United States: The Federal Financial Literacy and Education Commission (FLEC) was created to coordinate activities across the federal government and develop a national strategy on financial literacy to guide activities across the country in various sectors.

initiatives to educate marginal consumers;<sup>224</sup> publication of pedagogical note cards to educate financial services consumers on the relevant authority's website, and distribution of brochures on the occasion of the world consumer day;<sup>225</sup> and consumer awareness campaigns aiming at the larger consumer population. There are notable differences in the education requirements and programs of developing countries or economies in transition and the education and training needs of advanced economies. Of the issues listed outside of the OECD High-level Principles,<sup>226</sup> the majority<sup>227</sup> of respondents recognised a need for new guidelines for these issues - an average of 4.66/5 across issues in this section.

51. With regards to the *responsible business conduct of FSPs and authorised agents*<sup>228</sup> all respondents<sup>229</sup> were in agreement with the OECD High-level Principles,<sup>230</sup> although gradual differences remain with regards to concrete regulatory measures. All but four respondents<sup>231</sup> endorsed new guidelines for each of the listed issues in this section. Some respondents<sup>232</sup> called for protection against consumer over-indebtedness.

52. With regards to suitable *protection against fraud and misuse*<sup>233</sup> respondents unanimously endorsed the OECD High-level Principles and agreed that consumer assets should receive a high standard of protection against fraud and misuse of funds. A high relevance is attached to this issue by respondents, who overwhelmingly called for a new UNGCP on this issue.

53. On the protection of consumer *data and privacy* in consumer financial services transactions<sup>234</sup> the vast majority of respondents endorsed the OECD High-level

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FLEC is currently comprised of 22 federal agencies, including the FTC, with the Department of the Treasury serving as chair. FLEC's resources include the www.mymoney.gov website, which provides links to information, tools, and resources from diverse federal agencies in one central place.

<sup>224</sup> University of New Delhi. Republic of Korea's Financial Supervisory Service and financial associations provide classes and materials (textbook, videos, cartoons, etc) especially for the vulnerable consumer groups, like senior citizens.

<sup>225</sup> Tunisia.

<sup>226</sup> Issues (5.7 – 5.9): Adoption of the use of plain language in information produced for consumers; Guidelines on publication of minimum types of information for each financial service or product; Requirement of financial service providers to disclose how they are regulated and by which body; and Financial services providers should provide clients with regular updates on the performance of products and services.

<sup>227</sup> With the exceptions of Argentina, EU, the United States, and Japan. CI proposes an addition to GL 37, to include consumer information and education on financial services.

<sup>228</sup> Section 6 (6.1 - 6.5) deals with responsible business conduct of FSPs and authorised agents. It seeks to establish current practices in professional services regulation in FS, especially with regards to agents and external sales personal.

<sup>229</sup> South Africa and University of New Delhi partially agree with the following OECD High-level Principle: Staff (especially those who interact directly with customers) should be properly trained and qualified

<sup>230</sup> OECD High-level Principles promote responsible business conduct of FSPs as central in safeguarding consumer trust and long term stability in the financial system.

<sup>231</sup> Japan endorses a new guideline only for the case of section 6.1: financial services providers to work responsibly in the best interests of consumers. Portugal does not consider it appropriate for UNGCP to address section 6.4: Remuneration packages should be designed to incentivize responsible and fair conduct, encouraging disclosures of conflicts of interest. The United States considers it premature to determine whether a recommendation is warranted in this regard. CI proposes an amendment of GL 22 to include remuneration schemes into the issues that require fair treatment of consumers.

<sup>232</sup> For example, ADICAE calls for the establishment of guidelines for developing preventive and effective legislation on this issue.

<sup>233</sup> Section 7 (7.1) deals with (additional) consumer protection against fraud and misuse.

<sup>234</sup> Section 8 (8.1, 8.2) deal with consumer protection issues in this regard Section eight seeks to explore the connection between privacy and consumer protection legislation.

Principles,<sup>235</sup> agreed both on the relevance of the issue, and the need for additional UNGCP. Some member States highlighted the importance of cross border cooperation on these issues.<sup>236</sup> However, differences in national data protection regimes and general data protection legislation may still prevail.<sup>237</sup>

54. On *complaints handling and redress*<sup>238,239</sup> respondents endorsed the OECD High-level Principles and unanimously expressed the view that consumers should have access to fast, fair and inexpensive redress. Further suggestions<sup>240</sup> included mandatory private dispute settlement systems in combination with systematic reporting obligations on the number and content of settlements, strict public monitoring of complaints procedures or broad mandates for public consumer protection authorities or a special public prosecutor to pursue class action (on an opt-out basis) if a certain FSPs fails to reach satisfactory private settlements. Other respondents<sup>241</sup> suggested highlighting the role and importance of consumer organizations as mechanisms of representation of the legitimate interests of consumers, while others<sup>242</sup> calls for human and capacity building assistance for small economies.. The vast majority of respondents considered the issue to be very highly relevant<sup>243</sup> and called for additional UNGCP.<sup>244</sup>

55. With regards to the role of *competition*<sup>245,246</sup> in promoting a consumer friendly market environment, respondents pointed to the positive role of competition policy in promoting consumer choice and preventing abusive behaviour. All respondents endorsed the OECD High-level Principles, all but four assigned a high relevance to these issues and called for new guidelines.<sup>247</sup> Most respondents outlined the need for international cooperation on competition issues.<sup>248</sup>

<sup>235</sup> OECD High-level Principles hold with regards to data protection, that consumer's financial and personal information should be effectively protected i.e. by clear advance agreements on the type and purpose for which consumer information pertaining to a particular contract may be used.

<sup>236</sup> Argentina, Chile, Egypt, Honduras and Panama.

<sup>237</sup> On the regulatory challenges arising from technical innovation in recent years please see Chapter 3 of the report of the International Telecommunication Union (ITU) on Regulation and Consumer Protection in a converging environment. (ITU, Regulation and Consumer Protection in a converging environment, 03/2013). The United States reiterates its objection to the inclusion of this topic in the "other issues" working group. The United States considers that, besides the fact that a number of international initiatives are underway in multiple fora to address data protection issues, it may be premature to address this issue in the context of UNCTAD working groups because there are major efforts underway to re-evaluate existing frameworks at a regional or national level.

<sup>238</sup> Section nine (9.1 - 9.4) deal with complaints handling and redress. The section seeks to explore the state of (predominantly) private redress and settlement systems.

<sup>239</sup> OECD High-level Principles (Nr. 9.) hold that effective, fast and accessible redress as a key component of an effective consumer protection regime in financial services.

<sup>240</sup> By Hong Kong (China) for example.

<sup>241</sup> Such as ADICAE and CI

<sup>242</sup> Such as Belize.

<sup>243</sup> Japan considers all issues as being of low relevance.

<sup>244</sup> Portugal believes that a new guideline is not necessary and that these issues may be dealt with in an augmented Section E of the existing UNGCP. The United States considers that it is premature to determine whether a recommendation is warranted in this regard.

<sup>245</sup> Section 10 (10.1 - 10.3) deals with the intersection of competition policy and consumer welfare in financial services.

<sup>246</sup> OECD High-level Principles (Nr. 10) hold that competitive pressure in combination with the ability for consumer to search and compare FS has the ability to considerably enhance consumer welfare.

<sup>247</sup> Panama rated 10.1 (Promotion of competitive financial markets in order to benefit consumers from lower costs, greater choice and increased innovation) a medium relevance (3) and believes that there is no need for new guidelines in this area. Tunisia and Republic of Korea rated 10.2 (Rights of consumers to

56. With regards to *compensation schemes*<sup>249</sup> the majority of respondents reaffirmed the right of consumers to fair compensation within the scope of existing private law rules; some remarked that national insolvency laws already provided for special protection of consumer e.g. in banks insolvency proceedings. Again most respondents assigned the highest possible relevance<sup>250</sup> to these issues and call for new guidelines.

57. Within the final section of the questionnaire on "*other issues*" most respondents agreed that the issue of remittances was highly relevant and gave strong support to their inclusion; others assigned a lower priority.<sup>251</sup> Further issues put forward by respondents included mobile payments, e-banking, stored value credit cards and cooling off periods<sup>252</sup> or standardised disclosure forms.<sup>253</sup>

58. In response to the call for contributions for UNCTAD *Implementation Report* of 2013, suggestions have previously been made for a focus on access, competition and systemic stability, and that new guidelines should address universal service (including specific services such as remittances), deposit protection to prevent systemic collapse, competition policy and its application to financial services in terms of structural distortions and state aids, and facilitating switching by consumers.<sup>254</sup>

59. Overall, most respondents placed a particular emphasis on a strong legal and regulatory framework and the need for clearly mandated, well- resourced and independent oversight bodies. Equally, there was consensus on the rights of consumers to certain "core information" pertaining to financial products and the need to promote financial literacy and risk awareness. Most respondents also recognised a need for additional protection of the most vulnerable consumer groups. Contributions have demonstrated widespread endorsement for the OECD High-level Principles by both OECD and non-OECD members.

60. The results of these consultations are:

- Strong support for discussing possible revisions of the UNGCP to incorporate special provisions on financial services and related issues;

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compare products and affordably switch between products) at a relevance of 3 and respectively. Republic of Korea and Republic of Congo rated 10.3 (Development of mechanisms to inform consumers and assist with the above processes) at a relevance of 3. Further Congo does not believe 10.2 should be included in discussions.

<sup>248</sup> Malaysia highlights several initiatives within the ASEAN forum on competition to strengthen competition in the financial sector for the benefit of consumers.

<sup>249</sup> Section 11 (11.1 - 11-4) of the questionnaire deals with consumer compensation in the event of failure or insolvency of an FSP. Subject to the consultation is the availability of consumer protection funds, or special legislation to safeguard consumer interests in insolvency proceedings.

<sup>250</sup> All respondents grade each issue as 5, except Japan which considers all issues as being of low relevance; 2; and Benin as being of high relevance (4).

<sup>251</sup> Japan

<sup>252</sup> Hong Kong (China)

<sup>253</sup> University of New Delhi

<sup>254</sup> These suggestions were proposed by CI

- Wide agreement among respondents that, in their current form, the existing UNGCP do not cover many of the issues raised in the questionnaire;
- Strong support for the OECD/G-20 High Level Principles on financial consumer protection, by both OECD and non-OECD members.

### III. C. Other Issues

61. The Working Group on Other Issues, is Chaired by Juliana Pereira, National Secretary of Consumer Affairs of the Federative Republic of Brazil, and Rainer Metz, Deputy Director General V of the Federal Ministry of Justice and Consumer Protection of the Federal Republic of Germany.

62. The Working Group circulated a questionnaire in a call for contributions from member States and other relevant stakeholders on 7 March 2014.

63. The issues included in the questionnaire of this Working Group are: (i) access to knowledge; (ii) collective redress mechanisms; (iii) cross-border trade; (iv) data protection; (v) deceiving or abusive advertisement; (vi) public services; (vii) real estate; (viii) tourism; and (ix) other issues to be considered (open to additional participants' comments).

64. The questionnaire directed to participants several questions relating to the issues raised above: (i) pertinence of including the issue in the discussions of the Working Group; (ii) importance of the issue; (iii) particular issues to be considered under the relevant topic; (iv) ability of the current UNGCP in addressing the issue; (v) need for additional UNGCP; (vi) existence of adequate national or regional rules/policies<sup>255</sup>; (vii) capacities needed for adequate regulation and/or implementation; (viii) need for cross-border cooperation; and (ix) further comments (open to additional participants' comments).

65. So far, the Working Group has received 22 submissions corresponding to: Brazil, Chile, Colombia, Republic of Congo, Costa Rica, Cyprus, Egypt, Germany, Hong Kong (China), Republic of Korea, Mexico, Seychelles, South Africa,<sup>256</sup> Switzerland, Uruguay, the United States of America, Zambia, CI, CUTS, ICC, MGP and the University of New Delhi.

66. On the issue of *access to knowledge*, over a third of the participants believe this issue is important. On related issues expert interest gravitates towards access to consumer related information<sup>257</sup> and consumer education.<sup>258</sup> In particular, Hong Kong (China) proposed to eliminate "digital locks" that impair knowledge sharing, by creating limited

<sup>255</sup> The United States cautioned that a characterization of a nation's laws as "adequate" on any particular issue could be misleading. For example, the United States has a strong legal framework for consumer protection; however, its framework is constantly evolving to meet new challenges and the FTC and other agencies in the United States have made policy recommendations for reform in several of these areas.

<sup>256</sup> South Africa submitted contributions from two official institutions: the National Consumer Commission and the National Consumer Tribunal.

<sup>257</sup> Costa Rica, Colombia, Egypt and Republic of Korea.

<sup>258</sup> Colombia, Cyprus and Zambia.

lifespan software for digital content product. Some participants<sup>259</sup> argued GLs 3c, 22, 23 and 24<sup>260</sup> actually address the issue adequately. CI proposed a set of new Guidelines<sup>261</sup> on access to knowledge. The United States questioned the intended scope of this work, referred to the ongoing work carried by OECD on digital content products<sup>262</sup> and advised against duplicating discussions.<sup>263</sup> The United States further objected that, to the extent that this category is intended to relate to limitations on access to digital content bases on intellectual property rights, such matters are beyond the scope of the goals of the working groups and any revision of the UNGCP.

<sup>259</sup> Costa Rica, Cyprus, Mexico, and United States.

<sup>260</sup> UNGCP 22: "Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take informed and independent decisions, as well as me assures to ensure that the information provided is accurate."

UNGCP 23: "Governments should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products."

UNGCP 24: "Consumer access to accurate information about the environmental impact of products and services should be encouraged through such means as product profiles, environmental reports by industry, information centers for consumers, voluntary and transparent eco-labeling programmes and product information hotlines."

<sup>261</sup> Proposal to include: "Policies for the enforcement of intellectual property rights should seek to strike a fair balance between rewarding creativity and investment on the one hand, and the cultural, civic, health and educational rights of consumers and their economic and social development on the other."

"All laws, regulations and non-statutory instruments such as codes, standards and compliance and relevant research reports which are related to the protection and advancement of the interests of consumers and the public at large, should be freely, accessibly and publicly available, including via the Internet."

"Governments should restrict suppliers of digital content products and services from employing technologies that have a significant effect of preventing consumers from using those products or services in ways that would otherwise be reasonable, lawful and safe. These include any network locking technologies that restrict the use of devices to particular operator networks. In the case of products that are sold or later supplied with software that is required for their normal operation, the consumer's use of such software cannot be taken as a waiver of the right to use the product as expressed above, nor as consent to the removal of any functionality that the product possessed at the time of purchase."

"Standard provisions in non-negotiated product licenses should not prevent consumers from exercising the limitations and exceptions recognised in domestic intellectual property laws."

"Bearing in mind the value of the Internet as a channel for consumer education, including long distance learning and knowledge sharing between consumers, governments should facilitate universal access to the Internet through affordable telecommunications and Internet costs with special consideration given to the needs of public service and educational institutions, and of disadvantaged and disabled population groups."

"Governments and businesses should afford consumers the right to access neutral networks so that consumers would have the right to attach devices of their choice, the right to access or provide content, services and applications of their choice, and the right for this access to be free from discrimination according to source, destination, content and type of application."

<sup>262</sup> OECD, "Protecting and Empowering Consumers in the Purchase of Digital Content Products", OECD Digital Economy Papers, No. 219, OECD Publishing, available at: <http://dx.doi.org/10.1787/5k49czlc7wd3-en>

<sup>263</sup> To the extent that this category is intended to relate to limitations on access to digital content based on intellectual property rights, the United States considers it to be beyond the scope of the goals of the working group and any revision of the UNGCP. In addition, the OECD Committee on Consumer Policy is currently working on consumer protection issues in relation to digital content products in its update of its 1999 e-commerce guidelines. Accordingly, the United States considers that the "other issues" working group should refrain from discussing the issue of information and digital content products altogether, and that the UNCTAD e-commerce working group commence discussions once the OECD work is completed.

67. The issue of *collective redress mechanisms* was considered important by majority of experts. Although some experts believe the existing UNGCP Section E (measures enabling consumers to obtain redress)<sup>264</sup> addresses collective redress mechanisms, other experts also affirm the need to include new Guidelines to cover the issues of: class actions;<sup>265</sup> proof of damage and moral claims;<sup>266</sup> legal standing;<sup>267</sup> and small claim tribunals<sup>268</sup> and/or arbitration tribunals<sup>269</sup> that are expeditious and inexpensive<sup>270</sup>. The United States considered it premature to make specific proposals for revision in this area, but noted that UNGCP's basic provisions of Section E on "Measures enabling consumers to obtain redress" (GLs 32-34) could be supplemented with the provisions in the OECD's 2007 Council Recommendation on Dispute Resolution and Redress relating to collective redress.<sup>271</sup> France considered Section E could be renamed "Dispute Resolution and Redress", to take into account all possible mechanisms allowing consumers to resolve their litigation and to obtain redress. In addition to the OECD 2007 Council Resolution quoted above, France pointed to the European Union directive 2013/11 of 21 May 2013 on Alternative Dispute Resolution for Consumers and the European Union Recommendation of 21 June 2013 in this same subject.

68. The issue of *cross-border trade* is considered important by the majority of experts.<sup>272</sup> Although most experts, including Cyprus, France, Mexico, Switzerland and the United States, noted that the existing provisions on international cooperation (GLs 63 to 69)<sup>273</sup> address this issue, or those provisions on redress (GLs 32 to 34).<sup>274</sup> CI called for the inclusion of new Guidelines in UNGCP.<sup>275</sup> Experts identified a series of connected issues,

<sup>264</sup> See UNGCP 32, 33, 34

<sup>265</sup> Chile, and Hong Kong (China).

<sup>266</sup> Chile.

<sup>267</sup> Colombia, Costa Rica

<sup>268</sup> Mexico

<sup>269</sup> Uruguay.

<sup>270</sup> South Africa

<sup>271</sup> Available at <http://www.oecd.org/internet/consumer/38960101.pdf>. Although the United States agrees that this issue merits further discussion in the context of the working group, it disagree that this should be included as a basis for recommending revision, given that UNGCP's basic provisions on redress (*e.g.*, GL32-34) could be supplemented with the provisions in the OECD's 2007 Council Recommendation on Dispute Resolution and Redress relating to collective redress.

<sup>272</sup> CI considers the discussion of cross-border trade to have been handicapped by a lack of definition.

<sup>273</sup> *Op.cit.*, 127.

<sup>274</sup> *Op. cit.*, 52, 53, 54.

<sup>275</sup> CI proposed to amend the existing UNGCP to read: "All laws, regulations and non-statutory instruments such as codes, standards and compliance and relevant research reports which are related to the protection and advancement of the interests of consumers and the public at large, should be freely, accessibly and publicly available, including via the Internet".

Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market place. The above should apply to tourists and visitors as well as to resident populations, and special services may be required to provide such protections".

"Standard provisions in non-negotiated product licenses should not prevent consumers from exercising the limitations and exceptions recognised in domestic intellectual property laws."

"Governments should encourage and work together with 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

including: international recall mechanisms and standards' harmonisation;<sup>276</sup> clarification of the legal status of cross border transactions;<sup>277</sup> costs and risks in cross border payment; authenticity of products and services; prohibition of malpractice in the sale and provision of products and services; and crime reporting or a co-ordination mechanism to report crime to other jurisdictions.<sup>278</sup> In particular, some experts asked for increased international cooperation to establish cross-border dispute settlement mechanisms.<sup>279</sup> Hong Kong (China) asked the United Nations to promote a unified approach to cross-border trade among its member States. The United States questioned the intended scope of work in this area to the extent it overlaps with issues under consideration by trade related organizations. It also suggested that several of these issues could be covered in other substantive areas, e.g., through further work on cross-border enforcement cooperation along the lines of the 2003 OECD cross-border fraud guidelines. The United States further noted that, to the extent this topic is intended to deal with trade issues *per se*, the "other issues" working group should refrain from addressing it, given that there is a vast body of international treaties and laws on this topic and GL 10 already provides that procedures or regulations for consumer protection should not become barriers to international trade and be consistent with international trade obligations.

69. The issue of *data protection* was considered relevant by half or respondents, although three experts believe this should not be included in the discussions of this Working Group.<sup>280</sup> No expert has found the current UNGCP to address this issue, and many related issues have been identified, notably: protection of consumer data in online shopping and social media;<sup>281</sup> right to consumers' self-determination on their personal information use;<sup>282</sup> identity thefts and frauds and misuse of data;<sup>283</sup> and responsibility of vendor for misuse of data.<sup>284</sup> Experts reported on a few international instruments that have dealt with this issue: two European Union Directives<sup>285</sup> and one Council of Europe Convention.<sup>286</sup> CI proposed new text to address data protection.<sup>287</sup> Some experts highlighted that the issue of

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possible implications, including benefits and costs, of changes in consumption, particularly for the benefit of low-income consumer groups in rural and urban areas"

Consumer International also proposed to include the following provisions: "Competition policy as enshrined in the above UNCTAD Set should evolve towards stronger international collaboration to guard against the maintenance and emergence of international monopolies. Investigations by competition authorities into industry practices should take on not just retail practices that have a direct impact on final consumers but should also deal with upstream issues relating to industry structure and the need for international action to prevent cross-border supply cartels."

<sup>276</sup> Chile.

<sup>277</sup> Hong Kong (China), Republic of Korea and Zambia..

<sup>278</sup> All previous issues proposed by Hong Kong (China).

<sup>279</sup> Chile, Colombia, Costa Rica, Hong Kong (China), Switzerland, Uruguay.

<sup>280</sup> Cyprus and South Africa (National Consumer Commission), and the United States.

<sup>281</sup> Germany, Hong Kong (China).

<sup>282</sup> Costa Rica, Germany.

<sup>283</sup> Chile, Hong Kong (China), South Africa (NCT), and University of Dehli.

<sup>284</sup> Colombia.

<sup>285</sup> Data Protection Directive (95/46/EC) and E-privacy Directive (2002/58/EC), as reported by Germany.

<sup>286</sup> Council of Europe Convention No.CETS 108 of 28/01/1981 - Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

<sup>287</sup> Proposed new text: Governments and businesses should ensure effective consumer control of personal data. Collection of personal data (including internet usage information and IP addresses) should be made through free, informed and positive consent (opt-in), and only when strictly necessary, in an open and transparent way and wherever practicable and lawful. Confidential personal data should be protected against unauthorized use, and in any event, its use should be minimised. Those affected by any

data protection also concerns other governmental agencies,<sup>288</sup> and most call for strengthened international cooperation on this matter. The United States considered that although the issues of privacy and data protection are relevant to consumer protection and may merit further discussion among member States, as stated above in the e-commerce section, it would object to the inclusion of this topic in the "other issues" working group, given that there are a number of international initiatives underway in multiple fora to address data protection issues, including within United Nations bodies. Furthermore, the United States considered that it may be premature to address this issue in the context of this Working Groups because there are major efforts underway to re-evaluate existing frameworks at a regional or national level and the OECD has recently revised its global standards as discussed above.<sup>289</sup>

70. Although issue of *deceiving or abusive advertisement* attracted the highest rating in importance, experts<sup>290</sup> identified GLs 3(c),<sup>291</sup> 17,<sup>292</sup> and 22 to 26<sup>293</sup> as partially addressing this issue. Nevertheless, they also advised on dealing with the following connected issues: definition of abusive advertisement<sup>294</sup> and distinguishing it from information;<sup>295</sup> provable

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personal data breach must be promptly notified of the details of the breach and of the available means of redress.

<sup>288</sup> Cyprus and Hong Kong (China), and United States.

<sup>289</sup> The OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data were updated in 2013. Current work is examining privacy-related issues raised by large-scale data use and analytics. An expert roundtable was held in support of that work in March 2014. It is part of a broader project on the data-driven innovation and growth, which already produced a preliminary report identifying key issues. See <http://www.oecd.org/sti/ieconomy/privacy.htm>.

<sup>290</sup> Colombia, Cyprus, Republic of Korea, Mexico, Switzerland, and the United States.

<sup>291</sup> UNGCP 3(c): "Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;"

<sup>292</sup> UNGCP 17: "Governments should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures. In this connection, Governments should be guided by their commitment to the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in resolution 35/63 of 5 December 1980"

<sup>293</sup> UNGCP 22: "Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate."

UNGCP 23: "Governments should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products."

UNGCP 24: "Consumer access to accurate information about the environmental impact of products and services should be encouraged through such means as product profiles, environmental reports by industry, information centres for consumers, voluntary and transparent eco-labeling programmes and product information hotlines."

UNGCP 25: "Governments, in close collaboration with manufacturers, distributors and consumer organizations, should take measures regarding misleading environmental claims or information in advertising and other marketing activities. The development of appropriate advertising codes and standards for the regulation and verification of environmental claims should be encouraged."

UNGCP 26: "Governments should, within their own national context, encourage the formulation and implementation by business, in cooperation with consumer organizations, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organizations and other interested parties. These codes should receive adequate publicity."

<sup>294</sup> Colombia, Costa Rica and Zambia.

<sup>295</sup> Colombia.

advertisement;<sup>296</sup> cross border advertisement;<sup>297</sup> self-regulation;<sup>298</sup> addictive product advertisement;<sup>299</sup> other abusive marketing practices (such as spam);<sup>300</sup> unsolicited commercial emails;<sup>301</sup> and advertisement to vulnerable groups of consumers.<sup>302</sup> Some experts saw room for increased international cooperation, especially in sharing best practices on advertisement and marketing<sup>303</sup> and undertaking common action to increase surveillance over internet advertisement.<sup>304</sup> ICC drew attention to its International Code of Advertising and Marketing Communications Practice of 2011,<sup>305</sup> which covers all relevant areas highlighted by other experts. It noted that advertising and other forms of marketing communications are vital means of communicating between marketers and customers; and that they help to create efficient markets, both nationally and internationally, and bring significant benefits for both consumers and companies, as well as for society in general. The United States reported that many of these issues are currently being discussed at the OECD as part of its revision of the 1999 OECD E-commerce Guidelines.<sup>306</sup> In the opinion of ICC, responsible advertising and marketing communications, based on widely supported self-regulatory codes of conduct, are an expression of the business community's recognition of its social obligations. Also, the fundamental value of self-regulation lies in its ability to create, enhance and preserve consumer trust and confidence in the business communities behind it, and thereby in the marketplace itself; while effective self-regulation is also an instrument for the protection of individual companies' goodwill and reputation.

71. The issue of *public services* was divided in this questionnaire into *energy, transport* and *other public services*. One third of experts<sup>307</sup> considered these to be highly relevant while another third advised against including them in discussions.<sup>308</sup> Hong Kong (China) noted that the existing GL31<sup>309</sup> dealing with the distribution of essential goods and services could be read to address public services, while Switzerland argues for interpreting GL 56<sup>310</sup>

<sup>296</sup> Chile.

<sup>297</sup> Uruguay, especially for e-commerce and cable-tv.

<sup>298</sup> Chile and CUTS.

<sup>299</sup> Hong Kong (China).

<sup>300</sup> Costa Rica, Hong Kong (China), and South Africa.

<sup>301</sup> Zambia

<sup>302</sup> Hong Kong (China), and University of Dehli.

<sup>303</sup> Colombia and Zambia.

<sup>304</sup> Colombia and CUTS.

<sup>305</sup> Op. cit. 30, p. 17.

<sup>306</sup> In the context of the revision of the OECD 1999 Guidelines, op.cit. 10. The United States considers that the "other issues" working group should refrain from discussing this issue altogether until the OECD's work on the revision of the 1999 OECD E-commerce Guidelines is completed, given that it will address deceptive/abusive advertising in the digital context.

<sup>307</sup> Brazil (arguing for a general approach to public services), Egypt., Hong Kong (China) (for energy only), Zambia. CI. MGP-India, and University of Delhi.

<sup>308</sup> Chile, Colombia, Germany, Republic of Korea Uruguay, and United States. Specifically, the United States considers that this issue appears to be covered by the section on sustainable consumption, but would not object to the "other issues" working group engaging in discussions on topics relating to consumer information (e.g., energy rating systems or substantiation of energy efficiency claims for products), even if concrete recommendations are not warranted in this area.

<sup>309</sup> UNGCP 31: "Governments should, where appropriate, consider: (a) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific 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 rural areas; [...]"

<sup>310</sup> UNGCP 56: "In advancing consumer interests, particularly in developing countries, Governments should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals. Policies should be

for this same purpose. Experts identified some issues connected to energy: accessibility, affordability, reliability, efficiency and sustainability of services;<sup>311</sup> as well as vulnerable consumers and public services.<sup>312</sup> Hong Kong (China) would also like to address safety and costing issues related to transport. CI would also amend the guideline on water services<sup>313</sup> under this topic and propose a new guideline for energy.<sup>314</sup> The United States considers that the scope of this category is unclear. To the extent that this issue is intended to deal with sustainable consumption, the United States considers that this issue is already covered in the OECD guidelines. The United States would not object to discussing topics in these areas, even if it considers that concrete recommendations are not warranted.

72. The issue of *real estate* attracted moderate interest. Six experts advised against including this issue in the present discussions at all.<sup>315</sup> CUTS believes GL 1<sup>316</sup> addresses this issue, as it highlights consumer needs. Experts also noted the importance of issues connected to real estate such as: (i) housing affordability; (ii) agency sales tactics, (iii) overseas properties;<sup>317</sup> and (iv) termination of lease contracts.<sup>318</sup>

73. The issue of *tourism* was praised by over a third of experts as being very relevant. On this issue, Brazil reported its proposed Hague Convention on Co-operation in Respect of the Protection of Tourists and Visitors Abroad, while CI proposed some new text.<sup>319</sup>

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adopted or maintained for product quality control, adequate and secure distribution facilities, standardized international labelling and information, as well as education and research programmes in these areas. Government guidelines in regard to specific areas should be developed in the context of the provisions of this document."

<sup>311</sup> CUTS, Hong Kong (China), South Africa-

<sup>312</sup> Cyprus and University of Delhi.

<sup>313</sup> Proposed amended text: Governments should, within the goals and targets set by successive international commitments in the framework of the UN and others, formulate, maintain or strengthen national policies to improve the access, supply, distribution and quality of affordable water for drinking, and the provision of sanitation services, moving towards the goal of universal service<sup>101</sup>. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation in service provision and regulation. Subsidies should move towards subsidising connectivity rather than consumption.

<sup>314</sup> Proposed new text: Governments should formulate, maintain or strengthen national policies to improve the supply, distribution and quality of affordable energy moving towards the goal of universal service. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation in service provision and regulation. Subsidies should move towards subsidising connectivity rather than consumption. Governments should promote sustainable usage of energy, through efficiency and conservation measures, and at the same time promote the usage of renewable energy.

<sup>315</sup> Brazil, Germany, Republic of Korea, Switzerland, Uruguay and CI.

<sup>316</sup> UNGCP 1: "Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection have the following objectives: [...]."

<sup>317</sup> All previous issues raised by Hong Kong (China).

<sup>318</sup> South Africa.

<sup>319</sup> Proposal to include: "Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market place. The above should apply to tourists and visitors as well as to resident populations, and special services may be required to provide such protections"

Further, experts expressed their interest in connected issues such as: medical tourism;<sup>320</sup> packages and time shares;<sup>321</sup> compensation refunds and international dispute settlement mechanisms;<sup>322</sup> and disclosure of prices and other relevant information.<sup>323</sup> The United States considered consumer protection authorities' limited resources might be better spent focusing on improving enforcement capabilities, redress mechanisms and international cooperation.<sup>324</sup>

74. The questionnaire provided an opportunity for experts to propose any other issues for discussion. Chile expressed interest in including the issue of international alerts and recall mechanisms. France, and the United States asked for cross border enforcement cooperation to be included along the lines of the OECD 2003 Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders given need to establish better legal frameworks for mutual enforcement cooperation and develop consumer protection agencies' capacity to engage in such cooperation.<sup>325</sup> CI proposed the following topics: sustainable consumption, competition, consumer associations, redress, integration with other governmental policies, social responsibility, disability, safety, contracts, standards, gender, consumer rights, universal services, food and pharmaceuticals; providing new text for each of them.<sup>326</sup>

75. Experts were asked to rate the importance of issues mentioned in questionnaire from 1 to 5 (1 being not relevant and 5 being very relevant). Given the open nature of consultations (comprising member States and other stakeholders), and the limited number of contributions to the work of this Working Group, the ratings may only be considered indicative of expert's interests may not be considered authoritative *per se* for the purpose of prioritizing the work of this Working Group. Having said that, the resulting classification is as follows: deceiving and abusive advertisement (3.86); collective redress mechanisms (3.7); data protection (3.57); cross-border trade (3.52); tourism (3.29); access to knowledge (3.04); energy (2.95); transport (2.48); public services (2.38); real estate (2.14) and other public services (1.29). Following consultations, it seems experts feel there is more need for the UNGCP to address: deceiving and abusive advertisement, collective redress mechanisms; data protection; and tourism.

<sup>320</sup> Hong Kong (China).

<sup>321</sup> Colombia, Costa Rica and France.

<sup>322</sup> Costa Rica, Hong Kong (China), South Africa, Switzerland and Uruguay.

<sup>323</sup> Seychelles.

<sup>324</sup> The United States considers that the scope of this category is unclear. The United States considers that, to the extent this topic is intended to foster development of new rights, such a goal is unwarranted. However, the United States is open to engaging in discussion on this category as a framework for enforcement cooperation on issues specific to tourism. As a general matter, the United States believes that protecting tourists is a worthy goal; however, the United States considers that this topic does not merit separate discussion in the working group, much less a concrete recommendation, given that, in its view, consumer protection authorities' resources might be better spent focusing on improving enforcement capabilities, redress mechanisms and international cooperation as a general matter.

<sup>325</sup> Available at: <http://www.oecd.org/internet/consumer/2956464.pdf>.

<sup>326</sup> For the complete proposal by CI please see: Consumers International proposal for amendments to the UN Guidelines for Consumer Protection, Contribution by Consumers International to the Expert Meeting on the United Nations Guidelines for Consumer Protection, II Ad Hoc Expert Group Meeting on Consumer Protection, Geneva 8-12 July 2013, available at: <http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=350>.

76. The results of consultations show:

- Experts believe there are a few new issues that should be included in the UNGCP.<sup>327</sup>
- Four issues seem to attract most consensus at the present moment: deceiving and abusive advertisement; collective redress mechanisms; data protection and tourism
- Other issues might need further discussion and consultations to reach consensus.

### III. D. Implementation

77. The Working Group on Implementation of the UNGCP, is Chaired by Obiang Mfa, Director General of Competition and Consumer Protection of the Ministry of Economy and Sustainable Development of the Gabonese Republic.

78. This Working Group called for contribution from member States and other relevant stakeholders on 21 March 2014.

79. The issues included in the questionnaire of this Working Group are: (i) national implementation (comprising surveillance authorities and redress mechanisms); (ii) cross-border or bilateral implementation (including cooperation networks as well as formal and informal cooperation); and (iii) international implementation or monitoring.

80. The questionnaire directed to participants several questions relating to the issues raised above: (i) pertinence of including the issue in the discussions of the Working Group; (ii) importance of the issue; (iii) particular issues to be considered under the relevant topic; (iv) ability of the current UNGCP in addressing the issue; (v) need for additional UNGCP; (vi) existence of adequate national or regional rules/policies; (vii) capacities needed for adequate regulation and/or implementation; and (viii) further comments (open to additional participants' comments).

81. So far, the Working Group has received 17 submissions corresponding to: Argentina, Brazil, Chile, Egypt, Fiji, France, Hong Kong SAR, Nicaragua, South Africa,<sup>328</sup> Republic of Korea, Switzerland, the United States of America,<sup>329</sup> Zambia, CAG<sup>330</sup>, CI, MGP and the ZHAW School of Management and Law.

<sup>327</sup> The United States considers although certain issues may merit further discussion in the context of the working group, it considers it premature to opine on whether these issues should be included as a basis for recommending revision of the UNGCP, given that the nature of any substantive discussions will determine whether a recommendation is warranted.

<sup>328</sup> In this occasion, South Africa submitted a contribution from the National Consumer Commission only.

<sup>329</sup> The United States considers that many of the topics in the questionnaire were vague or of such a general nature that it would be imprudent to take a position on these issues and proposals without further discussion as to specifics.

<sup>330</sup> Citizen Consumer and Civic Action Group India

82. Experts reported the situation of the implementation of UNGCP in their respective jurisdictions at the *national level*. Almost all experts<sup>331</sup> believe it is important to have national authorities that are responsible for the implementation of UNGCP. Chile and France asked to establish an "Implementation Plan" to be later monitored and evaluated. France would also favour the institution of a voluntary peer review on consumer policy within UNCTAD. In the same line, France<sup>332</sup> and Hong Kong (China) highlighted the importance of instituting control authorities for the proper implementation of UNGCP. On the contrary, Chile argued in favour of a general call for governments to provide the appropriate control mechanisms. Experts were divided over the need for new Guidelines in UNGCP to address the need for *surveillance authorities*.<sup>333</sup> Regarding consumer policy formulation, the OECD's Consumer Policy Toolkit<sup>334</sup> provides a practical guide designed to aid policy makers in identifying and evaluating consumer problems and in developing effective measures to address consumer issues. The Recommendation on Consumer Policy Decision Making that was subsequently adopted by the OECD provides further guidance in this regard.<sup>335</sup> On the issue of *redress mechanisms*, most experts agreed on the importance of enabling a good network of consumer associations, with adequate and sustainable level of funding to support their growth.<sup>336</sup> On the existence of *alternative dispute settlement mechanisms* and *small claims tribunals*, some experts highlighted the need to ensure proper compensation for consumers<sup>337</sup> and to make these procedures accessible and inexpensive.<sup>338</sup> On this particular issue, CI also proposed new text.<sup>339</sup> Chile also expressed an interest in collective actions and injunctions in judicial procedures.

83. Experts were also asked to express their views on *cross-border and bilateral implementation*. In this connection, all experts emphasised the importance of cooperation networks to exchange information, undertake common actions and share best practices. The following networks were named: APEC (Electronic Commerce Steering Group), FIAGC, ICPEN, OECD-CCP, CONCADECO and MERCOSUR. Most experts believe there is no need for new Guidelines on cooperation networks.<sup>340</sup>

<sup>331</sup> On the contrary Republic of Korea, Switzerland, and MGP-India,.

<sup>332</sup> France notes that control authorities should oversee the implementation of the UNGCP content as incorporated into national law.

<sup>333</sup> In favor: Egypt, Hong Kong (China), Nicaragua, South Africa, Zambia, CAG and CI; against: Brazil, Chile (except for the need to include sanctions for breaches of UNGCP), Fiji, MGP-India, Republic of Korea and ZHAW.

<sup>334</sup>; OECD Consumer Policy Toolkit, available at: [http://www.oecd-ilibrary.org/governance/consumer-policy-toolkit\\_9789264079663-en](http://www.oecd-ilibrary.org/governance/consumer-policy-toolkit_9789264079663-en)

<sup>335</sup> OECD Recommendation on Consumer Policy Decision Making [C(2014)30], available at: <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=303&InstrumentPID=320&Lang=en&Book=>

<sup>336</sup> Hong Kong (China).

<sup>337</sup> Hong Kong (China).

<sup>338</sup> Fiji.

<sup>339</sup> Proposal to include: "The expertise of consumer organizations should be brought to bear in resolving consumer complaints through involvement in dispute resolution forums, either statutory or non-statutory. This participation can come either as adjudicators or as supervisory board members for specific dispute resolution schemes. Governments should ensure that information pertaining to the volume, frequency and nature of complaints in the various consumer sectors is collected, analysed and reported on a regular basis. Self-regulatory codes and dispute resolution schemes should publish their results company by company and corporate social responsibility reports likewise."

<sup>340</sup> CI proposes a series of amendments of the existing guidelines to cope with this issue, namely GLs 10, 26, 28, 63, 68 and 69

84. The majority of experts agreed that there is a need for *international implementation or monitoring mechanisms*. Following proposals expressed earlier,<sup>341</sup> the questionnaire proposed a hypothetical UN Commission or the creation of an intergovernmental structure on consumer protection within UNCTAD. Two civil society organizations preferred only the first option,<sup>342</sup> while the vast majority of experts favoured mostly the second proposal.<sup>343</sup> Regardless of the institutional structure, experts called for the creation of an international body to undertake the following activities: reports on consumer rights;<sup>344</sup> consumer law and policy reforms;<sup>345</sup> reports on national compliance with UNGCP;<sup>346</sup> exchange of best practices and common actions;<sup>347</sup> and development of common policies.<sup>348</sup> According to some experts, this body should be independent, concerned solely with consumer issues,<sup>349</sup> and proactive in policy recommendations.<sup>350</sup> The United States considered that it is premature to take a position as to whether any new institutional mechanisms would be warranted, given that it remains unclear how this entity will be constituted, formed and funded.

85. Consultations show:

- Experts agree on the need to implement UNGCP at the national, bilateral and international level;
- The current UNGCP do not need major adjustments for their implementation at the national and bilateral level,
- Experts identify the need to create an international structure<sup>351</sup> that:
  - May oversee universal implementation of UNGCP allowing future revisions,
  - Serve as a forum to discuss policy issues related to consumer protection
  - Serve as a forum to address capacity building activities for national agencies.
  - Propose a dynamic follow-up of UNGCP, to assess the need for regular updates and revisions to the text and propose amendments.

<sup>341</sup> During the II Ad Hoc Expert Group Meeting on Consumer Protection, 8 to 12 July 2013.

<sup>342</sup> CI, MGP-India.

<sup>343</sup> Argentina, Brazil, Chile, Egypt, Fiji, France, Hong Kong (China), Nicaragua, South Africa, Switzerland, Zambia, ZHAW. Republic of Korea and the United States would not favour any of the two proposals.

<sup>344</sup> Fiji, South Africa.

<sup>345</sup> Fiji.

<sup>346</sup> Hong Kong (China) and MGP-India.

<sup>347</sup> France, Nicaragua and Zambia.

<sup>348</sup> South Africa.

<sup>349</sup> Chile.

<sup>350</sup> Zambia.