



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2017)

## Opinion

**Title: Fitness Check on Consumer and Marketing Law**

**Overall opinion: POSITIVE**

### (A) Context

This evaluation report is a REFIT Fitness Check on consumer and marketing law. It evaluates six EU directives that jointly address consumer protection and marketing rules. The exercise aims to determine whether the directives remain fit for purpose. It will identify any adjustments that may be needed.

The directives cover the whole cycle of business-to-consumer transactions, from advertising and contracts to contract performance and business-to-business (B2B) transactions.

### (B) Main considerations

**The Board acknowledges the efforts put into presenting a substantial amount of information and findings on the European consumer and marketing law.**

**The Board gives a positive opinion, but considers that the report should be improved with respect to the following key aspects:**

- 1. The report's conclusions do not fully match the findings of the report and the presented evidence.**
- 2. The conclusions on effectiveness and efficiency do not sufficiently reflect the difference between a) concluding on the legal framework being fit for purpose and not generating substantial compliance costs and b) concluding on delivering sufficient consumer protection to EU citizens. The report questions the latter issue, pointing to insufficient enforcement of the legal framework in Member States, problems with awareness among consumers and businesses and non-negligible compliance issues.**
- 3. The report does not sufficiently consider recent proposals on digital contract rules and on consumer protection cooperation that are currently in the legislative process. Similarly, the report does not sufficiently integrate the findings of the evaluation of the Consumer Rights Directive, notably with regard to the simplification potential.**

### (C) Further considerations and recommendations for improvement

- 1. The report compiles a considerable amount of information and findings, which provides a useful basis for future revisions of the consumer and marketing law directives. The report**

proposes solutions to some of the problems. However, the report should improve the consistency between the findings under different criteria and Directives, and the overall conclusions of the report (including the proposed follow-up actions). Some findings from the main part of the analysis are not taken up in the conclusions and some conclusions are not backed up by the earlier analysis. As the information on increasing trust of consumers presented in graphs and tables is inconclusive, the report should provide more evidence from consumer scoreboards to support the claim that the legislation is effective.

2. The report acknowledges that the EU consumer protection and marketing law is based largely on a minimum harmonisation approach. Consequently this does not allow for formulating clear conclusions on effectiveness due to transposition and implementation issues. Therefore, the report should draw more nuanced conclusions on effectiveness and efficiency. The Fitness Check concludes that the legal framework is in general fit for purpose and generates low compliance costs. However, the evaluation has identified some flaws and inconsistencies that could require adjustment. The conclusion should reflect this. The report provides evidence on only partial awareness of rights and obligations among consumers and businesses, non-negligible compliance costs linked to complaints and infringements and, in general, weak enforcement of the legal framework in Member States. In this vein, the report should adapt the conclusions to reflect this nuanced approach.

3. The Fitness Check focuses on 6 out of 12 Directives constituting the EU consumer and marketing law. Furthermore, it relates to sectoral legislation on several occasions. Consequently the report should address the cross-references to legal proposals or evaluations in the same policy area in a more enhanced manner. The report should address more explicitly the links with the parallel evaluation of the Consumer Rights Directive including possible overlaps or inconsistencies identified and simplification potential further exploited. Similarly, the report could strengthen its conclusions on effectiveness and efficiency by referring to the analysis conducted for the impact assessment on the revision of the Consumer Protection Cooperation Regulation. In doing so, it could provide the reasons for the weak enforcement of the legal framework in Member States and elaborate on how the revised CPC Regulation to tackle this problem.

4. The report should strengthen the links with the digital contract rights proposal (currently in the legislative proceedings). The report should examine the coherence of this proposal with the consumer protection laws subject to this Fitness Check as well as explain the differences in approach. In the various consultations with stakeholders, the consumers confirmed their preference for having a single consumer protection regime for online and offline transactions, provided by the current legal framework. Nevertheless, in some aspects the digital right proposal is diverging from a single regime, with the risk to undermine the overall coherence of the legal framework.

5. The report and its executive summary need to be more accessible for lay readers. Some of the detailed analysis could usefully be moved to annexes and the main report shortened.

#### **(D) RSB scrutiny process**

The lead DG is advised to ensure that these recommendations are duly taken into account in the report prior to launching the interservice consultation.

Reference number	2016/JUST/023
Date of RSB meeting	27/04/2017