



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **A**
ECONOMIC AND SCIENTIFIC POLICY



New Trends and Key Challenges in the Area of Consumer Protection

Economic and Monetary Affairs

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**Internal Market and
Consumer Protection**

New Trends and Key Challenges in the Area of Consumer Protection

In-depth Analysis for the IMCO Committee



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

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IN-DEPTH ANALYSIS

Abstract

This paper, prepared by Policy Department A at the request of the Committee for Internal Market and Consumer Protection, presents the emerging trends having an impact on consumers and identifies the challenges associated to them in the area of consumer protection. It aims at guiding future reflection on policy actions.

This document was requested by the European Parliament's Committee on Internal Market and Consumer Protection.

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LIST OF ABBREVIATIONS

BEUC Bureau Européen des Unions de Consommateurs

C2C Consumer-to-consumer

EBA European Banking Authority

EC European Commission

ECB European Central Bank

EU European Union

OTT Over-the-top technology

EXECUTIVE SUMMARY

Background

The Committee on Internal Market and Consumer Protection requested a research on the contribution of Internal Market and Consumer Protection to growth. The study on *Contribution of the Internal Market and consumer protection to growth* responds to this request by evaluating how the recent achievements of the 7th legislature and the current initiatives in the area of internal market and consumer protection have contributed to growth.

Aim

In complement to this work, the present paper gives an overview of new emerging consumer trends and the possible challenges associated to them. It aims at contributing to the reflection on future policy actions that would improve consumer protection & empowerment and, given the important role of consumers in the economy, foster growth. This overview indicates possible priorities for IMCO action during the 8th Parliamentary term and could be supplemented by further research studies to be requested by the IMCO Committee on specific issues.

Main findings

One of the major trends of the last decades impacting consumers is technological and digital development (see section 2).

Consumers' lifestyles have become increasingly 'digital', **new digital products and services have emerged** (see sub-section 2.1.). With this new evolution come many privacy and security challenges. There is a need for increasing privacy protection with regards to new digital products and services, such as internet of things. This could be done in the framework of the on-going revision of EU data protection framework. Action should also be taken in order to protect consumers from unfair contract terms and offer them effective dispute resolution in a global and internet-based context (e.g. for cloud computing services). In addition, the reduced frontier between digital services and products may create legal uncertainty with respect to the definition of digital content. Finally, as technology develops, new and ever-more inventive fraudulent practices appear, affecting consumer trust, and should be combated.

With the continuous development of the internet, new information tools for making purchasing decisions emerge, providing consumers with an ever wider choice in consumer goods, but also requiring them to manage that vastness of information (see sub-section 2.2.). Reliability, transparency and independence of digital comparison tools such as comparison websites should be ensured. Services provided by search engine operators should also be guided by the principles of equality and non-discrimination. Trustmarks for e-commerce could help consumers in making informed choices, but the multiplicity of them may lead to confusion. In addition, new types of commercial practices linked to the internet have appeared (e.g. personalised pricing, behavioural profiling), raising questions of data protection and transparency.

Consumers also tend to make **increased use of electronic payments and face new forms of payment such as virtual currencies** (see sub-section 2.3). The security of e-payments should therefore be ensured. This is being discussed in the framework of the on-

going revision of the Payment Services Directive. Consumer protection with regard to the emerging virtual currencies should be provided, making the system compliant with existing regulation through the creation of virtual currency schemes as entities accountable to the regulator.

The internet also facilitated the development of sharing economy services (see sub-section 2.4). The lack of trust from the consumer side may be an obstacle to the development of the sector. Therefore, policy-makers should make sure that consumers' expectations (e.g. better prices, better quality) are not met without sufficient consumer protection, in particular in comparison to conventional services providers. In particular, there is a need for appropriate protection for consumers participating as investors in crowdfunding.

New digital trends in consumption should not cause to forget other challenges that consumers are facing : **the increased complexity of financial products and services** (sub-section 3.1.), the **increasing influence of environmental, social, ethical and other quality aspects in purchasing decisions** (sub-section 3.2.) and **the emergence of a new kind of vulnerable consumers** (sub-section 3.3.). This paper does not develop further on product safety and market surveillance as the legislative package proposed by the Commission during the 7th legislation is assessed in the study on the *Contribution of internal market and consumer protection to growth*.

Regarding financial services, the provision of third party advice and the adoption of a proactive and preventive approach by the legislator (e.g. prohibiting too risky or complex products, ensuring that transaction costs paid by the consumer correspond to the actual cost, allowing more stringent sanctions, developing better mechanisms for excessive personal debt) are among the elements that could help improving consumers' information and combatting mis-selling.

Transparency and trust in information is important and consumers should be able to identify truly sustainable, ethical or social products through clear, reliable, transparent, relevant and comparable information. The proliferation of claims and labels as well as the existence of unknown and meaningless logos lead to consumer confusion. Therefore, creating a more coherent and rational labelling framework with logos that are easily understood by consumers would increase consumers' skills and ability to make informed choices.

Finally, with new complex products, increased poverty rates due to the economic crisis and the development of the internet tool, new vulnerable consumers appear. Policy makers should make an effort to avoid exclusion and discrimination based on age, income, social situation or geographical location of consumers. Some stakeholders advocate for the access to the Internet to be recognized as a "universal service".

1. INTRODUCTION

The current economic environment and rapid societal and technological changes have led to new trends in consumer habits and new challenges for consumer protection. In 2012, the Commission pointed out in the European Consumer Agenda these problems and consumer challenges¹. The Commission identified challenges regarding product, service and food safety, but also associated to the digital revolution, to sustainable consumption and social exclusion. Information overload coupled with knowledge deficit, and rights not respected in practice are also mentioned as problems to solve. Finally, sector-specific challenges in key sectors, such as food, energy, transport, electronic communications and financial services were identified. Subsequently, the EU has taken actions in the form of legislation - but not only -, in order to improve consumer protection. Part of the EU action aims at creating a consumer protection framework that fits the digital age, covering the e-commerce and online services sector² and the electronic communications sector.³ Other non-digital aspects and horizontal issues are also dealt with.⁴ A recent study⁵ describes and assesses these key legislative/policy achievements under the 7th legislature relevant for consumer protection. From now on, the full, correct and effective implementation of this legislation must be closely monitored and the relevance of adopting corrective measures must be assessed in the future.

Looking forward and assessing whether other emerging trends that have not been tackled yet could weaken consumer confidence should be the next step. This is important given that, as mentioned by the Commission, "empowered consumers are a significant driver of growth, as they intensify competition and innovation"⁶. **The aim of the present paper is therefore to detail the new emerging consumer trends and the possible challenges associated to them.** From the outcome of this analysis, one could better evaluate the risks for consumers, the need for new consumer protection measures and the opportunities for growth.

The most significant and outstanding trends come from the digital environment. The development of new digital products and services (Internet of Things, cloud computing, etc.), the use of internet for purchasing purpose, the development of new forms of payment and of the sharing economy (e.g. crowdfunding) raise a number of issues with regards to consumer protection. As far as non-digital trends are concerned, one could highlight the increased complexity of some products and services (e.g. in the financial sector), the consumers' willingness to look for products with specific characteristics, such as green products and the need for better information related to it and, finally, the emergence of a new king of vulnerable consumers.

¹ European Commission, Communication on *A European Consumer Agenda - Boosting confidence and growth*, COM(2012)225, 22/05/2012.

² The Consumer Rights Directive, the Alternative Dispute Resolution Directive and Online Dispute Resolution Regulation, the Regulation on Cross-Border Payments in the Community, Recommendation on Collective Redress, as well as a proposal for initiatives to protect consumers in the area of online gambling, a proposal for a Common European Sales Law and a proposal for a new directive on Payment Services.

³ Better Regulation and Citizens' Rights Directives and proposal for a Connected Continent Regulation.

⁴ In the energy sector: adoption of the Third Energy Package, the Energy Efficiency Directive, and adoption of a guidance document on vulnerable consumers. In the transport sector: proposal for a Regulation on air passenger rights, adoption of a European vision for Passengers, adoption of Bus Regulation, adoption of Waterborne Regulation, adoption of the Consumer Rights Directive, proposal for a Package Travel Directive. On product safety: the proposal for a Product Safety and Market Surveillance Package.

⁵ CIVIC Consulting, *Contribution of the Internal Market and consumer protection to growth*, November 2014.

⁶ See European Commission, *Consumer Empowerment in the EU*, Commission Staff Working Paper, SEC(2011) 469 final, 7 April 2011.

The digital consumer trends and related challenges are presented in Section 2. Non-digital consumer trends are discussed in Section 3 through the prism of one of their most noticeable features: the need for information.

2. NEW DIGITAL CONSUMER TRENDS AND CHALLENGES

The development of internet is one of the major trends of recent times, making consumers' lifestyles become increasingly 'digital'. This sector is in constant evolution and new trends in consumption and challenges for consumer protection have recently emerged.

2.1. Emergence of new digital products and services

With the development of the internet and of new technologies, new online services emerge, e.g. the multichannel distribution of TV programmes and video including over-the-top technology (OTT)⁷ where television or other audio/video services are delivered using the public internet. This new evolution has raised many issues for consumers, involving also other actors of the internet sphere, such as internet services providers. The liability of the latest and their capacity in managing what content consumers can have access to (cf. the net neutrality) are part of the debate. The emergence of cloud computing, the internet of things and big data is also a big revolution in the development of internet which is not deprived of challenges.

If we take the **example of the internet of things (IoT)**, consumers face **privacy and security issues**. Data losses, infection by malware, unauthorized access to personal data, intrusive use of wearable devices, or unlawful surveillance have been identified as the main data protection risks coming along with it⁸. The concept of IoT implies that the objects of everyday life (e.g. clothes, refrigerators, thermostats, medical devices) are connected and able to be identified by other devices. Some expect that there will be around 30 billion devices connected to the internet of things by 2020. In the IoT, objects are able to send information to the manufacturer enabling him to better understand how customers use the device, to maintain the device, and also to create new types of applications. Along with the potential benefits for consumers comes the issue of the collection and control of the data by the private-sector, as IoT also means creating and sharing new data about consumer habits, behaviour, and personal preferences. This would require increased privacy protection.

According to a 2011 Eurobarometer, the lack of trust in regard to the safety of personal data holds consumers back from taking part in e-commerce and accepting new online services. Therefore, the vulnerability and lack of sufficient security of these devices should be tackled in order to avoid abuses.

As regards the solutions to tackle the security and privacy concerns and misuse of personal data, the European consumer organisation BEUC puts its expectations on the on-going revision of EU data protection framework. On the IoT more specifically, the Working Party set up by Directive 95/46/EC on the protection of individuals with regard to the processing of personal data recently provided some guidance on how the EU legal framework should be applied in the context of the IoT⁹.

Beyond this issue of data protection, other challenges arise from the new online services or digitalised products, for example **unfair contract terms in cloud computing services**

⁷ OTT is a system of audio and video distribution using open internet (e.g. Youtube, Netflix).

⁸ Article 29 Data Protection Working Party, Opinion 8/2014 on the on Recent Developments on the Internet of Things, 16 September 2014. Accessible at: http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp223_en.pdf.

⁹ Article 29 Data Protection Working Party, Opinion 8/2014 on the on Recent Developments on the Internet of Things, 16 September 2014. Accessible at: http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp223_en.pdf.

contracts. As pointed out by a recent study, the current regulatory environment of national contract laws may not be fit for cloud based services.¹⁰ Large imbalance in negotiating powers may lead to unfair contracts where the risk usually lays on the consumer of cloud based services. In addition, the global cloud business context makes **effective dispute resolution** a challenge.¹¹

The reduced frontier between digital services and products may create **legal uncertainty with respect to the definition of digital content.** For example, the IoT tends to change the definition of a "product" consumers buy as IoT implies an evolution of product development technology in a way that "*product can mean a device, a service [...] powered by software or other technology, a service provided by people, a flow of data, a software application for monitoring, automation, or analysis, or in many cases all of the above.*"¹²

The emergence of new services using OTT, and the use consumers make of it, raises the question of the appropriate **regime applicable to user-generated content** (e.g. reusing a song for a video created by a consumer/user and upload on internet) **with regards to copyright.** This and other copyright-related issues, such as the consumer detriment coming from the discrimination between purchases of immaterial copies and of copies on physical media with respect to copyright, should be raised in the context of the copyright reform (Commission proposal expected in 2015).

We should also mention the impact on consumers of **taxation of digital content**, even though this issue is not new. Despite the new VAT system - entering into force in January 2015 -, the issue of the distinction between digital and physical product from a VAT perspective has not been tackled.¹³ The question of the non-alignment of VAT rates for similar goods and services when supplied online or offline and the subsequent question of the visible price differences to the consumers has therefore not received a final answer yet.

It is worth noting that other new consumer trends raise concerns of different nature, such as additive layer manufacturing (i.e. "3D printing") or consumer co-creation. They may have implications with regards to intellectual property rights or raise social and/or security concerns¹⁴. These concerns do not seem to be directly linked to consumer protection but has an impact on citizens, businesses and society in general.

Finally, as technology develops, new and ever-more inventive **fraudulent practices** may appear, affecting consumer trust. Internet fraud does not only concern e-commerce, but also fraud done via internet services (forums, chat-rooms, e-mails, software, etc.).

2.2. Widespread use of internet as information tool for purchasing purposes

With the internet era, choice for consumers has increased. In order to deal with the huge amount of information provided on the internet and to inform both online and offline purchases, consumers increasingly make use of search engines, product and price comparison websites, product rating and review tools and social media. The issue here is uncertainty regarding the **accuracy and reliability** of the information found on the internet, leading to imperfect information disclosure.

¹⁰ GHK, *The Cost of Non-Europe in the Single Market III - Digital Single Market*, September 2014.

¹¹ See European Commission, *Trusted Cloud Europe Survey, Assessment of Survey Responses*, July 2014.

¹² Dan Woods, *How the 'Internet of Things' Is Transforming the Meaning of Product*, Forbes, 25/06/2014.

¹³ Only the competition aspect is foreseen: from 1 January 2015 on, taxation of cultural products and services will be payable in Member States where consumer is established, which would reduce distortion of competition for companies residing in different countries and subject to different tax rates.

For example, to what extent **can we trust comparison websites**? The remuneration models of such websites (pay-per-click or pay-per-sale) and the possible subsequent conflicts of interests as well as the biased presentation of the results is an issue. The transparency of the criteria used by the website to recommend products is also important, as a lack of transparency could result for the consumer in excessive charges or unsuitable purchases. Search process and evaluation, results presentation and ranking should be unbiased and transparent and, for example, should not be linked to the type of device, service or application used for the search. In addition, consumers may pay excessive attention to the information given (e.g. the price) and may not always understand the terms and conditions of the comparison websites, e.g. the limited scope of products or providers covered. In order to overcome inadequate information in the case of comparison websites, the European Banking Authority is contributing to prepare a guide for consumers helping them to know how best using comparison websites and making them aware of the potential issues in the financial sector.¹⁵ More generally, the Commission is working to improve the reliability and transparency of digital comparison tools¹⁶.

Also, internet search should be non-discriminatory and ranking by **search engines** should be unbiased. For example, search engines operators should be prevented from favouring some websites and from committing abuses in the marketing of their own products or services. The unbundling of search services and other commercial services could be envisaged.

Third-party certification of e-commerce websites through trustmarks contributes to improving consumer information and confidence. Consumers tend to base their purchasing decisions on the presence - or not - of trustmarks (and the services and assurance associated to them). There is a wide range of trustmarks with different characteristics, some focusing on privacy issues, on technical aspects, other providing dispute resolution system or offering money back guarantees, etc.¹⁷ However, the development of trustmarks faces the same constraints as offline labelling schemes, i.e. a multiplicity of trustmarks and a potential confusion among consumers (see sub-section 3.2).¹⁸

The increasing use of internet by consumers has also led to the emergence of **new advertising and selling strategies**. A number of commercial practices have appeared which could be considered problematic, such as **online profiling and personalised pricing**. With online profiling, consumers do not have control over their personal data, do not know how they are used and for what purpose, have a risk to be offered a reduced choice and can be the victims of price discrimination. Personalised pricing is "*the practice where businesses may use information that is observed, volunteered, inferred, or collected about individuals' conduct or characteristics, to set different prices to different consumers (whether on an individual or group basis), based on what the business thinks they are willing to pay.*"¹⁹ This practice can provide benefits to consumers, e.g. personalised

¹⁴ For example the possibility of producing 3D firearms may raise obvious security problems. Co-creation (business-customer's joint creation of value) can be a source for new products and ideas but can also raise concerns relating to the position of the consumer as worker.

¹⁵ EBA, Consumer trends report 2014, 28 February 2014.

¹⁶ See report from the Multi-stakeholder Dialogue on Comparison Tools, *Comparison Tools - Providing consumers with transparent and reliable information*, March 2013, and the on-going in-depth study.

¹⁷ For a detailed description of services and features of trustmarks see TNO/Intrasoft international, *Trustmark Clusters, Stakeholder Evaluation and Policy Options*, 18 December 2012.

¹⁸ See potential advantages and disadvantages of an EU trustmark for e-commerce in the CIVIC Consulting study, *A Pan-European Trustmark for E-Commerce: Possibilities and Opportunities*, July 2012. Also see ECC-Net report.

¹⁹ According to Office of Fair Trading, see *Personalised Pricing, increasing transparency to improve trust in the Market*, May 2013.

discounts based on personal information collected. Businesses do not necessarily use information to set higher prices to consumers, but concerns about the transparency of such practices have been reported.²⁰ This **lack of transparency** creates suspicion from the consumer side and prevents them from using online services.

2.3. Increased use of electronic payments and emergence of new forms of payment

Recent data show that **electronic transactions have grown** in Western Europe from 6% to 9% in the last 10 years.²¹ In comparison, over the same period, cash transactions have decreased from 81% to 68% (22% are card payment transactions).²² At the same time, payments made over the internet **face higher risks of fraud** than traditional payment methods.²³ Even if there aren't many EU-wide data publicly available on fraud, the European Central Bank (ECB) reports that card-not present fraud, i.e. fraud committed in situations where the merchant does not see the credit card, has become the most prevalent type of payment fraud. Trust in retail payment made electronically and therefore payment security is an issue, even if one can understand that no e-payment system can offer 100% security.²⁴

Steps have already been taken with the ECB giving recommendations for increasing the security of such payments. The European Banking Authority is currently consulting on the implementation of guidelines on the security of internet payments which could be used for adjustments in the negotiations on the revision of the Payment Services Directive.

With the increased use of electronic transactions, **new payment instruments and related services using information and telecommunications technologies** have emerged, such as electronic money and pre-funded payment schemes, cumulative collection services, payment portals and integrated payment solutions, and mobile payments (m-payments).²⁵

Among the newest non-traditional payment methods, the **virtual currency** raises concerns.²⁶ The definition of virtual currencies given by the ECB is "*a digital representation of value that is neither issued by a central bank or public authority nor necessarily attached to a FC, but is accepted by natural or legal persons as a means of exchange and can be transferred, stored or traded electronically*"²⁷. Virtual currency is made of virtual currency units of account which are generated by an online community of operators ("miners") using open-source software downloaded on their computers. Miners are allocated an amount of these newly created coins as a reward for taking part in the system²⁸. The units are stored

²⁰ See Report from Office of Fair Trading, *Personalised Pricing: Increasing Transparency to Improve Trust in the Market*, May 2013.

²¹ European Banking Authority, *EBA Consumer Trends Report 2014*, 28 February 2014.

²² The trend in Eastern Europe is less pronounced: in 2013, 94% of the payments were done in cash, 1% in electronic, 5% in card payment.

²³ European Central Bank, *Recommendations for the security of internet payments*, Final version after public consultation, January 2013.

²⁴ ECB, *E-payments without frontiers*, Issue Paper for the ECB Conference on 10 November 2004.

²⁵ For a detailed description of these, see ECB, *E-payments without frontiers*, Issue Paper for the ECB Conference on 10 November 2004.

²⁶ Virtual currencies started in the online computer gaming environment. One of the most well-known examples is Bitcoin, created in 2009 by "Satoshi Nakamoto" (unidentified person, could be a pseudo for one person or a group of persons).

²⁷ European Banking authority, *EBA Opinion on 'virtual currencies'*, 4 July 2014. (EBA, 2014b).

²⁸ See p.42 "Figure 4: How Bitcoins Enter into Circulation and Are Used in Transactions" in *Virtual Currencies, Emerging Regulatory, Law Enforcement, and Consumer Protection Challenges*, United States Government Accountability Office, May 2014. <http://www.gao.gov/assets/670/663678.pdf>.

on an electronic device and used to exchange goods and services without using a currency with legal tender status. People who do not take part in the creation process can also buy and sell virtual currency units in exchange of official currencies through online specialised platforms. The concept expands rapidly and is now evolving towards a new form of payment for goods and services in shops and restaurants.²⁹

If virtual currencies can be seen as an alternative to legal currencies and a technology that could provide benefits and innovation³⁰ (transaction speed, lower transaction costs³¹, security of personal data), reports and warning messages from the banking authorities describe the risks arising from the virtual currencies such as Bitcoin.³² Essentially, the dangers seem to be linked to the characteristics of the virtual currency: anonymity leading to circumvent anti-money laundering and counter-terrorist financing rules. As regards specific consumer protection issues, concern has been expressed about the loss of consumer funds maintained by Bitcoin exchanges, the volatility in Bitcoin prices, and the development of virtual-currency-based investment products.³³ In addition, the ECB has reported the lack of possibility to refunds or payment guarantee, the absence of effective channel to complain and access to redress and the opaque price formation.

A number of actions have already been taken to better understand the phenomenon and several Member States and the EBA have issued warnings on consumers' possible risks.³⁴ At EU level, a task force has been set up in order to assess whether virtual currencies should and can be regulated and to adopt a concerted EU approach. Currently, differences exist among countries as regards the legal qualification of virtual currency, fiscal regime and the regulation of exchange of virtual currencies. Some voices call for regulating virtual currencies in order to make it secure for the users and to prevent the fraudulent use of it.³⁵ In its Opinion of July 2014, the **EBA sets out the requirements that would be needed to regulate 'virtual currencies' and proposes a regulatory approach.**³⁶ For example, the EBA advises to make mandatory the set-up of virtual currency schemes as entities accountable to the regulator and incorporated in an EU Member State as legal persons. The EU institutions can use the EBA's Opinion to identify the risks to consumers and to assess if there is a need for new legislation or amending existing legislation.

²⁹ ECB reports in 2014 that virtual currencies expand rapidly and that the number of traditional retailers using such a currency for payment has increased significantly. Bitcoins are now accepted by a number of online and traditional shops but also by certain donation sites and projects.

³⁰ See for example the Report to the French Senate, *Rapport d'information sur les enjeux liés au développement du Bitcoin et des autres monnaies virtuelles*, July 2014.

³¹ EBA assume however that transaction fees will increase in the future (European Banking authority, EBA Opinion on 'virtual currencies', 4 July 2014).

³² The EBA consumer trends report 2013 mentioned as a concern the security and fraud risks still arising from new banking and payment technologies, among which are the virtual currencies (e.g. Bitcoin). EBA identifies around 70 risks linked to the use of virtual currencies.

³³ United States Government Accountability Office, *Virtual Currencies, Emerging Regulatory, Law Enforcement, and Consumer Protection Challenges*, Report to the Committee on Homeland Security and Governmental Affairs, U.S. Senate, May 2014.

³⁴ For example, in France, a working group on virtual currencies was set up leading to recommendations for preventing the use of it for fraudulent and money laundering purposes. *L'encadrement des monnaies virtuelles - Recommandations visant à prévenir leurs usages à des fins frauduleuses ou de blanchiment*, Groupe de travail "Monnaies virtuelles", piloté par TRACFIN, June 2014.

³⁵ *Rapport d'information sur les enjeux liés au développement du Bitcoin et des autres monnaies virtuelles*, July 2014.

³⁶ European Banking authority, *EBA Opinion on 'virtual currencies'*, 4 July 2014.

2.4. Traditional exchanges redefined through technology and peer communities: the development of sharing economy services

The idea of the "sharing economy" covers various phenomena referring to the same philosophy.³⁷ Different sectors are concerned, such as transportation (e.g. bike-share systems, car-sharing, ride-sharing, taxi-sharing, etc.), finance (e.g. crowdfunding, peer-to-peer lending), real estate (e.g. co-working spaces, home exchange, peer-to-peer property renting, etc.). Goods are also concerned (e.g. open source software, C2C online auctions, etc.). The sharing economy can take different shapes referring to profit and non-profit models: gifting, loaning, bartering, renting, swapping or shared ownership. In many cases access to services and products in the sharing economy are offered by businesses that enable peer-to-peer exchanges through internet. They do not offer the product or the service; they offer access to it and facilitate transactions in exchange of a membership fee or a commission. This kind of business model gives the opportunity for start-ups to develop (see the example of eBay, AirBnB or BlablaCar³⁸). Building up on gaps left over by the "traditional" economy, businesses of the sharing economy offer services or access to goods and services that could better meet consumers' expectations and needs, especially in a period of crisis. From the consumer's side, more and more adepts are convinced by the sharing economy, but a lot of people are still unfamiliar with peer-to-peer platforms and are hesitant as to whether this kind of business model offers sufficient guarantees for consumer protection. Misleading commercial practices may be one concern, as shown by a recent case brought to the French *Tribunal Correctionnel de Paris* against the ridesharing service Uber.³⁹ The sharing economy also raises the issue of the liability of the intermediary. For example, to what extent is the intermediary responsible for the security of the service provided to a user of its platform? More generally, it is not clear whether and to which extent conventional industry laws (e.g. banking, employment, taxation) apply to peer-to-peer markets.⁴⁰ As regards consumer law itself, peer-to-peer transactions are excluded, for example C2C auctions (e.g. eBay) are not covered by the right of withdrawal applying to online auctions as it stands in the Consumer Rights Directive. It is expected that the new Commission will address the issues raised by the sharing economy with respect to consumer protection and define a common approach in the EU in order to build accountability towards consumers in the system.⁴¹

If we look into a specific area of collaborative economy, **crowdfunding** deserves some specific attention. Crowdfunding refers to open calls to the wider public - usually through the internet and relayed by social media - to raise funds for a specific initiative. Generally, these calls are open only for a specified time period and the project or venture receives many small amounts of money. If crowdfunding initially referred to philanthropic projects, nowadays different financial and non-financial return schemes coexist: donation-based, reward-based, lending-based and equity/securities-based crowdfunding.⁴²

³⁷ Different terms have been used to describe it, including "peer-to-peer economy", "individual-to-individual services (i2i)", "mesh", "collaborative economy", "collaborative consumption" among others.

³⁸ <http://www.economist.com/news/business/21606273-french-startup-sharing-economys-newest-star-sharing-la-fran-aise>.

³⁹ The French subsidiary of Uber has been sentenced to a 100.000 euros fine for presenting its service UberPOP (which connects passengers with drivers for short distance rides) as ridesharing when the price paid by the passenger did actually not represent share of the expenses but was based on a predefined price scale with a minimum price set.

⁴⁰ Business Innovation Observatory, *The Sharing Economy, Accessibility Based Business Models for Peer-to-Peer Markets*, for European Commission Directorate-General for Enterprise and Industry, September 2013.

⁴¹ See Commissioner Věra JOUROVÁ's answers to the European Parliament questionnaire.

⁴² Bruegel, *Crowdfunding: broadening Europe's capital markets*, October 2014.

If there are grounds to be supportive of crowdfunding as an alternative form of financing (according to EBA, crowdfunding has been the most widespread form of raising funding), certain key issues need to be observed: lack of awareness and understanding, challenges of protecting intellectual property, fraud and consumer protection concerns, legal uncertainty⁴³. From a consumer - taken as contributors or investors - point of view, money transfers and assurance of fund delivery, misleading or lack of information disclosure, unfair or misleading contract terms, absence of dispute resolution and redress mechanisms are to be pointed out.⁴⁴ Especially, the risks for contributors seem to be the highest in lending and investing models (loss of invested capital, fraud).

According to the responses to an EC public consultation⁴⁵, 51% of the respondents consider that **there is a need for EU action** to ensure investor appropriate protection for lending and securities crowdfunding. The need for transparency (on platform charges, interest rates, and expected output) is also mentioned. Currently, it seems that crowdfunding campaigns and platforms can fall under EU legislation⁴⁶ depending on the model they use. Some Member States have taken actions (e.g. guidelines) but the divergent approaches among national legislations might be a problem and in particular may create legal uncertainty on the rules to apply. The forthcoming report⁴⁷ and the regulatory workshops organised by the Commission on this topic could contribute to better understanding the issue and assess the possible solutions.

⁴³ European Commission, *Communication on Unleashing the potential of Crowdfunding in the European Union*, COM(2014) 172, 27.3.2014.

⁴⁴ European Banking Authority, *EBA Consumer Trends Report 2014*, 28 February 2014.

⁴⁵ European Commission, *Communication on Unleashing the potential of Crowdfunding in the European Union*, COM(2014) 172, 27.3.2014.

⁴⁶ Aspects can be touched upon in the anti-money laundering directive and regulation 1781/2006, the e-commerce Directive, the EU patent system, the directive on misleading and comparative advertising, the directive on unfair commercial practices, the unfair contract terms directive, the Prospectus Directive, the Payment Services Directive, Markets in Financial Instruments, Capital Requirements, Alternative Investment Fund Managers, Consumer Credit, Distance Marketing of Financial Services, Regulations on Capital Requirements, European Venture Capital and European Social Entrepreneurship Funds.

⁴⁷ In the course of 2015.

3. NON-DIGITAL CONSUMER TRENDS: THE NEED FOR BETTER INFORMATION AND KNOWLEDGE

As already explained in the introduction, several non-digital consumer concerns (e.g. safety of goods) are currently being or have recently been dealt with by the EU legislator.⁴⁸ This section does not get back to these issues but intends to describe new consumer trends through the prism of a common characteristic: the lack of consumer information and knowledge.

There is an increased demand from the consumers' side to receive accurate information to be sufficiently confident to decide and purchase correctly, according to their needs. However, more than one third of Europeans do not feel knowledgeable as consumers.⁴⁹ At the same time, consumers need information more than ever. They need minimum skills and literacy to face new complex products and services, especially in the financial and insurance sectors. Consumers have new requirements, e.g. demand for green products, which imply a need for special information. The current economic, social and digital environment also generates new vulnerable consumers.

3.1. Increased complexity of financial products and services

An analysis conducted in 2014 shows that (consumer) financial services are the worst performing sector from a consumer perspective.⁵⁰ Low scores are registered for trust, comparability and ease of switching as well as overall consumer satisfaction. Consumers lack information and capacity to understand complex financial products or services and to fully understand the risks involved when buying these products. For example, consumers face difficulties to understand the trade-offs between charges, risks, returns and guaranties⁵¹, especially in the case of loans taken out in foreign currencies, payment protection insurance and credit protection insurance in connection with loans. In a recent study, other examples of financial services and products with potential serious disruptive impact for consumers are given.⁵² Consequently, consumers can be the victims of mis-selling or inappropriate selling. In addition to this, complex and not comparable pre-contractual information prevents consumers to act as empowered consumers.⁵³

According to a recent study, the vast majority of the financial products and services are not *per se* harmful to consumers. Consequently, combating mis-selling or inappropriate selling, insufficient or bad advice would reduce the risk from the consumer's side.⁵⁴ In order to enhance consumers' financial capabilities, a number of recommendations could include the provision of accurate, simple and comparable information and the presentation of average consumer experience. The provision of independent financial advice from a third party and the improvement of existing financial literacy and capability programs could also improve

⁴⁸ For an assessment of the legislative and policy achievements during the 7th legislature, see CIVIC Consulting, *Contribution of the Internal Market and consumer protection to growth*, November 2014.

⁴⁹ Special Eurobarometer 342, Consumer Empowerment, 2012. http://ec.europa.eu/consumers/consumer_empowerment/docs/report_eurobarometer_342_en.pdf

⁵⁰ According to the 10th Consumer Markets Scoreboard, June 2014.

⁵¹ European Banking Authority, *EBA Consumer Trends Report 2014*, 28 February 2014.

⁵² For example a number of mortgage products; loan products which carry a high risk of a substantial residual liability for a borrower because of lack of proper debt discharge or reduction mechanisms; credit products with high interest rates, in particular payday/instant loans and credit cards with high rates combined with high limits; savings, investment and pension products with high charges which reduce net returns to savers; complex hedging products which carry high risk for the purchasers of such hedges (London Economics, 2014).

⁵³ See BEUC's paper.

⁵⁴ London Economics, *Consumer Protection Aspects of Financial Services*, February 2014.

consumer understanding and knowledge in the financial sector. Other measures that would enhance consumer empowerment in this area would be to have a more pro-active and preventive approach to retail financial markets (e.g. prohibiting too complex or risky financial products), to ensure that consumer transaction costs reflect the actual cost, to apply more stringent sanctions and to develop better mechanisms and processes for dealing with excessive personal debt.⁵⁵

3.2. Purchasing decisions increasingly influenced by environmental, social, ethical and other quality aspects

A new type of consumer has emerged who takes into account environmental, social and ethical aspects when purchasing. For example, there is an increasing demand for greener goods and services. According to an EU-wide survey⁵⁶ 41% of the respondents say that their purchasing decision is influenced by the environmental impact of a product or service. This is an increase in comparison to a 2011 survey (at that time, 29% said so).

When it comes to enabling consumers to make informed choices, labelling is key. As indicated in the above-mentioned survey, a majority (60% of the respondents) gets the information through an environmental label affixed to the product. At the same time, among the reasons for not considering environmental impact, the lack of trust in environmental claims (25%) and the lack of information about the environmental impact (38%) are reported. Therefore, **transparency and trust in information is important** and consumers should be able to identify truly sustainable, ethical or social choice through clear, reliable, transparent, relevant and comparable information.

The challenge lies in the **proliferation of claims and labels** and the **potential confusing information** coming with it.⁵⁷ For example, a 2012 survey shows that 65% of respondents think there are too many food labelling schemes and they don't know enough about them.⁵⁸ Confusion about labels and claims can come from the fact that there is indeed a **large variety in labelling schemes**⁵⁹. For example, they can be either third-party certified schemes or self-declaration schemes or have a private or public status. Claims can be mandatory or voluntary, explicit or implicit, advisory or non-advisory which make comparisons difficult for consumers. As regards environmental claims, the fact that producers are free to create green claims providing they are not misleading to consumers (green terms in brand names contributing to consumer's confusion), and the absence of (mandatory) standardised labels make comparisons more difficult. In addition, among the **large number of logos, many remain unknown or are misunderstood** by consumers, such as the CE mark.⁶⁰ In this case, proposals for solutions to improve the understanding of the mark have been made in the context of the adoption of the product safety and market

⁵⁵ For further details, see concrete recommendations in London Economics, *Consumer Protection Aspects of Financial Services*, February 2014.

⁵⁶ Flash Eurobarometer 358 - Consumer attitudes towards crossborder trade and consumer protection report, publication: June 2013.

⁵⁷ Multi-stakeholder Dialogue on Environmental Claims (MDEC), *Environmental Claims Report from the Multi-Stakeholder Dialogue - Helping consumers make informed green choices and ensuring a level playing field for business*, Report presented at the European Consumer Summit 18-19 March 2013 http://ec.europa.eu/consumers/archive/documents/consumer-summit-2013-mdec-report_en.pdf.

⁵⁸ *Consumer market Study on the functioning of voluntary food labelling schemes for consumers in the European Union*, Final report by the Ipsos and London Economics Consortium, December 2013.

⁵⁹ Such as Ecolabel, Fair Trade label, MSC fisheries, Quality Food Schemes (Protected Geographical Indication, Protected designation of origin, Traditional Speciality Guaranteed), etc.

⁶⁰ See examples in Special Eurobarometer 342, Consumer Empowerment, 2012. http://ec.europa.eu/consumers/consumer_empowerment/docs/report_eurobarometer_342_en.pdf.

surveillance package.⁶¹ In the area of services, an attempt to standardise key information provided to consumers has been made in the tourism sector.⁶² The need for origin marking for non-food products is also discussed by the co-legislators in the negotiations on the Product safety and market surveillance package and is the object of a recent Green Paper by the Commission.⁶³

Ensuring **better transparency** and at the same time developing **meaningful labels and logos in a coherent and rational way** would enable consumers to get the information they need and would increase consumers' skills and ability to make informed choices.

3.3. A new environment leading to a new kind of vulnerable consumers

Vulnerable consumers are "those who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity".⁶⁴ The most vulnerable consumers are the oldest aged above 55 and the youngest group aged 15-24.⁶⁵

Vulnerable consumers remain affected in different "traditional" sectors such as product safety, food, energy, transport, health, financial services, and redress.⁶⁶ With the emergence of new complex products and services, the rise in poverty due to the economic crisis, and the development of the internet tool, new vulnerable consumers appear, as regards financial products, access to green products, and especially in front of the internet economy.

Consumers with lower income tend to give precedence to price rather than to quality (and therefore safety) when choosing products or services. This may have an impact on the flow of imported goods with low security guarantees and on the purchase of good quality products such as green products.

The new digital environment carries a **risk of "digital divide"** creating inequality between consumers, in terms of internet access and level of e-skills. The most vulnerable consumers⁶⁷ i.e. the elderly and children, are especially exposed as regards their digital activity. The former tend to stay outside the development of the internet and IT tools products due to disability or a lack of IT skills and miss out on a number of developments, opportunities and essential information. The latter fully adopted internet in their daily life and remain especially exposed as regards data privacy issues, as they can be easily targeted by fraudulent and misleading advertising.

As internet users are more likely to feel knowledgeable as consumers than those who do not use the internet,⁶⁸ efforts should be made in order to avoid exclusion and discrimination based on age, income, social situation or geographical location of the consumer. Several

⁶¹ See for example amendment n° 60 to the proposal for a regulation on Consumer Product Safety introducing a voluntary 'EU Safety Tested' marking meaning that CE marked products have been tested for safety and approved by some kind of authority.

⁶² The European Commission proposed a set of voluntary European Tourism Quality Principles (see Proposal for a Council Recommendation on European Tourism Quality Principles, COM(2014)85, 20 February 2014).

⁶³ Green Paper - Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products, COM(2014)0469, 15/07/2014.

⁶⁴ See recital 34 of the Consumer Rights Directive.

⁶⁵ Special Eurobarometer n°342 on Consumer Empowerment, 2012.

⁶⁶ See European Consumer Consultative Group, Opinion on consumers and vulnerability, 7th February 2013 http://ec.europa.eu/consumers/archive/empowerment/docs/eccg_opinion_consumers_vulnerability_022013_en.pdf.

⁶⁷ Special Eurobarometer n°342 on Consumer Empowerment, 2012.

⁶⁸ Special Eurobarometer 342, Consumer Empowerment, 2012. http://ec.europa.eu/consumers/consumer_empowerment/docs/report_eurobarometer_342_en.pdf.

stakeholders advocate for the access to the Internet to be recognized as a “universal service”.⁶⁹

⁶⁹ European Consumer Consultative Group, Opinion on consumers and vulnerability, 7th February 2013 http://ec.europa.eu/consumers/archive/empowerment/docs/eccg_opinion_consumers_vulnerability_022013_en.pdf.

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NOTES

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