

INTERNAL MARKET AND CONSUMER PROTECTION (IMCO)

BACKGROUND PAPER

WEBINAR

The impact of COVID-19 on the Internal Market and consumer protection

Chair: Anna Cavazzini (MEP)

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**Altiero Spinelli Building (Brussels) - József Antall (4Q1)
with remote participation of IMCO Members**

Introduction

The COVID-19 pandemic is posing an unprecedented challenge to the health and wellbeing of people across the globe. The EU Member States are, to varying degrees, affected by its effects on the health of their citizens, but also on their economies and social welfare.

Member States' responses to the outbreak of the pandemic have so far been fragmented and uncoordinated in the approach to the measures undertaken. The measures of response to the COVID-19 pandemic range from border controls and restrictions on free movement and travelling, to export bans on selected medical products, and bans on the provision of certain services such as the organisation of cultural events. Some of these measures have affected consumer rights, in some cases disregarding obligations laid out in European law.

Since many of such measures have directly affected the functioning of the Internal Market, a series of actions were undertaken at EU level to respond to the consequences of some Member States' measures and to ensure the good functioning of the Internal Market. These included:

- lifting the bans on national export;
- the introduction of 'Green Lanes' at border crossings;
- common rules for cross-border air travels;

- establishment of European-wide public procurements for medical supplies; and
- close cooperation with the private sector to ensure the free flow of medical equipment, bolstering the manufacture of certain essential goods.

It is worth noting that, while the Treaty on the Functioning of the EU (TFEU) recognises that the Union has shared competence to take actions related to the Internal Market, consumer protection or transport policy, in the area of protection and improvement of human health, Article 6 TFEU establishes that the Union only has competence to carry out actions to support, coordinate or supplement the actions of the Member States.

The webinar aims to facilitate an information exchange between policy makers and experts regarding the impact of COVID-19 on the Internal Market and on consumer protection, to discuss the effects of the measures introduced at national and EU level to mitigate the negative consequences of the COVID-19 crisis on the Internal Market, and to suggest what more could be done to ensure a well-functioning Internal Market in these circumstances and in future crises. Best practices and lessons learnt will be highlighted, together with possible future measures useful for alleviating the impacts of similar possible crises on the Internal Market.

The purpose of the present background paper is to outline the main points that will be discussed by the speakers during the webinar.

PART 1 - Free movement of goods and people

Topic 1: Impact of COVID-19 on free movement of goods - shaping EU action around the principle of solidarity (Roberto Baratta, department of Law at the University of 'Roma Tre')

The presentation opens by outlining Internal Market challenges in the time of the COVID-19 crisis with regard to risks of supply chain disruption for medical and protective goods. In the initial phase of the current pandemic crisis context, national governments reacted on a unilateral basis. As regards the free movement of goods, under Article 36 TFEU **Member States are allowed to protect health and life of human beings**, provided that three conditions are met. The measures they adopt must be:

- 1) justified, i.e. suitable, necessary and proportionate;
- 2) applied in a non-discriminatory manner; and
- 3) transparent, i.e. notified to the Commission.

At this stage, there is no precedent concerning the implementation of the conditions for derogation measures in relation to the protection of 'public health and life' in a pandemic crisis. A legal analysis would, therefore, need to refer to the well-established case-law concerning that derogation to the free movement of goods principles. Moreover, had the Commission started infringement proceedings against a Member State, the pre-contentious stages are confidential.

That said, unilateral deviations from the Internal Market rules imply that there is no common safety net and response. A deeper analysis might be needed at a later stage, based on a broader coverage.

A common (European) approach is required by the **principle of solidarity**. Common actions to preserve the functioning of the Internal Market, while addressing public health challenges, remain desirable and also required by the principle of solidarity. European institutions are to take all necessary steps to ensure the adequate supply of protective equipment across the EU.

Subsequently, the presentation explores ways to reconcile the Internal Market and public health. First, the use of 'Green Lanes' to preserve the EU-wide operation of supply chains and ensure the functioning of the Internal Market is discussed. Second, export authorisations to third countries as regards personal protection equipment are addressed.

EU actions to counter national/unilateral reactions are presented afterwards. These include:

- 1) Joint procurement action for various medical and similar goods;
- 2) A European medical stockpile for ventilators, personal protective equipment, vaccines, medicinal products and laboratory supplies; and
- 3) Public procurement law during the COVID-19 crisis.

The conclusion is that EU institutions are expected to take over their share of responsibility while assisting Member States and public authorities, so as to ensure the good functioning of the Internal Market, to help national authorities to better pursue the protection of public health, and to shape EU responses around a dimension of solidarity, i.e. the awareness of a 'common destiny' linking the Union and its citizens.

Topic 2: Impact of COVID-19 on the free movement of people – an Internal Market approach

(Sophie Robin-Olivier, Sorbonne School of Law)

The presentation starts by considering the variety of restrictions to free movement of persons (workers or service providers) introduced during the COVID-19 outbreak and their consequences. Second, their justifications and their limits under EU law requirements are discussed.

The focus then shifts to one central outcome of the crisis in the field of free movement of workers: the emergence of a new category of EU worker, "**essential workers in critical occupations**", whose mobility continued during the outbreak. This category includes employees and self-employed, in particular those exercising a regulated profession, in another Member State. To this end, the Communication from the Commission "Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak" is discussed.

After considering the definition of this category, the presentation sheds light on the specificity of some of its sub-groups, **seasonal workers and health professionals**, who were granted particular attention in relation to their role and qualifications, in the current health and economic crisis. First, the situation of seasonal workers is presented and the Communication from the Commission "Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak" (C(2020) 4813 final) is discussed. Second, the case of health professionals is addressed in light of the Communication from the Commission "Guidance on free movement of health professionals and minimum harmonisation of training in relation to COVID-19 emergency measures – recommendations regarding Directive 2005/36/EC" (C(2020) 3072 final).

The presentation concludes with a series of questions on the consequences of the COVID-19 outbreak on the future of EU workers' mobility. First, with regard to the new category of migrant EU workers "essential workers in critical occupations", the issues raised concern whether this distinction is discriminatory and whether a new path to revisit some aspects of intra-EU mobility can be identified. Second, the question arises as to whether the distinction between EU and third-country workers is blurred in the outbreak. The third and final question is whether COVID-19 will fundamentally change mobility within the EU.

PART 2 - Consumer protection and freedom to provide services

Topic 1: Consumer protection and COVID challenges for consumers - e-commerce and travel

(Karen Ghysels, European Consumer Centre Network)

The presentation starts by highlighting that the number of requests to the network of European Consumer Centres (ECC-Net) has **doubled compared to 2019** due to COVID-19. This can be considered as a very positive development, because it proves that European consumers know they can turn to the ECC-Net for advice and assistance in these cases. It also shows that the European Consumer Centres continue to be relevant, also in times of crisis.

The role of the ECC-Net in the provision of advice and assistance to travellers is subsequently explored. The EU Regulation on Air Passenger Rights and the Directive on Package Travel came under intense pressure as a result of the pandemic. While a call for solidarity is certainly understandable, the **solidarity between consumers and traders should be reciprocal** rather than one-sided. Travel restrictions depending on the residence of the traveller and the airport of departure became reality and national authorities put forth alternatives (e.g. vouchers) to the consumer protection foreseen by EU law. This fragmentation throughout Europe made it difficult for the ECC-Net to advise consumers in cross-border cases, although the network managed to have an efficient exchange of these national insights among the centres. The strong position taken by the European Commission in its guidelines was very important for the ECC-Net's work helping consumers claim their rights in cross-border cases and highlighted the continuing importance of Europe for the European consumer. Insolvency of air carriers is not addressed in Regulation 261/2004. In recent years, even before COVID, several air carriers went bankrupt with far-reaching consequences for the consumers.

The ECC-Net is currently still fighting for consumers:

- to get their reimbursement;
- to obtain a voucher they can actually use; and
- to ensure booking intermediaries fulfil their role in the reimbursement process, by requesting refunds with the air carriers.

On some aspects, the ECC-Net was unable to help consumers, for example:

- when consumers were unable to travel but were not entitled to a reimbursement because their flight had not been cancelled; and

- when consumers booked an accommodation but were unable to go due to COVID-19 restrictions.

A strong role for the European Consumer Centres (ECCs), national enforcement bodies (NEBs), enforcement authorities part of the Consumer Protection Cooperation (CPC) network and Alternative Dispute Resolution (ADR) bodies in Europe is key to obtain redress and enforcement for EU consumers. Especially in the travel area, the role of NEBs and ADRs should be clarified and their competences harmonised.

Another aspect addressed in the presentation concerns online shopping as impacted by COVID-19. Two aspects are addressed: **delivery issues and frauds**. With regard to the first point, while e-commerce has boomed, delivery issues have increased. Webshops and delivery services were not ready for this and deliveries took more time than expected as stocks were insufficient. But here too solidarity can be key as long as it is reciprocal. In this framework, the recovery of e-commerce should have a green aspect. Companies offer deliveries in 24h and free of charge returns. While the cooling-off period is fundamental for consumers shopping online, fast deliveries and free returns have a heavy impact on the environment.

With regard to the second point, the increasing reliance of consumers on e-commerce during the pandemic has opened the door to increasing levels of fraud. Fraudulent webshops took consumers' money for masks and hand gel that were never delivered. In this context, the ECC-Net noticed a strong link with websites made through the Canadian company "Shopify". The CPC-Net was also notified of this problem. An EU legal framework regarding chargeback would be very beneficial to protect EU consumers from these frauds.

Topic 2: COVID-19 impact on hospitality services provision - emerging trends (Pier Luigi Sacco, Senior Advisor and Head of the Venice Office of the OECD)

The presentation starts by focusing on how the COVID-19 pandemic will affect behaviours. It is stressed that this is likely not going to be a transitory shock: even when the effects of the pandemic will be over, it is reasonable to expect long-term changes in hospitality-related behaviours. A few emerging patterns are discussed:

- firstly, mobility attitudes and habits will be permanently affected;
- secondly, people will become more sensitive to context and modes of social contact;
- thirdly, safety concerns will maintain high relevance; and
- finally, as people get more accustomed to buying online rather than going to bricks and mortar shops, a parallel shift toward take-out and home delivery can be expected.

This will have to be addressed through substantial investments in design, equipment, and communication that not all businesses can afford.

The question of how such behavioural changes are going to impact the supply side is subsequently explored. The new habits will clearly affect business and organisational models: this will include hedging against uncertainty and investing in safety on the one hand, and exploring alternative revenue streams as well as preparing for a post-pandemic operational regime on the other.

Relevant current trends are presented:

- Over 50% of customers say they are not willing to dine-in at restaurants immediately after the crisis is over;
- Over 50% of customers say they are not willing to travel to a destination or stay at a hotel any time soon;
- 30-40% of customers are willing to pay more for increased safety and protection – the question thus arises as to whether this will lead to cream-skimming of the hospitality market; and
- Over 60% of customers think that massive technology deployment will be necessary to ensure safety and minimise human-to-human contact.

In light of this, expected long-term supply shifts are discussed. The crucial questions are what will make customers return and in what timeframe, and whether they are likely to return soon enough to warrant the investment needed to cope with the 'new normal'.

Three expected shifts are presented. The first one is the '**robotization**' of the sector, i.e., the increasing use of service robots for health and safety as well as cost-containment reasons. In this regard, the human/robotic service supply mix will depend on the given type/size/context of business. The second aspect is a **shift from high-touch to high-tech**, including contactless payment, QR-accessible digital menus, touchless elevators, entrance doors, etc., and an acceleration toward AI and contactless virtual reality environments. The third expected development is a **disruption of undeclared work**. The hospitality sector largely relies upon undeclared work, which is heavily affected by the pandemic but does not receive support. As a consequence, businesses will have to adopt models that rely less and less upon undeclared work, which now poses issues of safety and economic viability on both sides. This is likely to have an impact that is not favourable on the position of undeclared workers, as the new situation could further accelerate robotization. The alternative is to have public schemes that incentivise the disclosure of undeclared work and to study possible solutions to support human employment in the sector.

Finally, some key implications are explored. Once the strategic investments have been made, the transition towards high-tech touchless hospitality will continue even if the pandemic crisis is over. This is also due to the fact that the possibility of new future pandemics is far from remote. The hospitality sector has invested so far in 'unintelligent' technologies. The sector could now become a R&D frontier of cutting-edge social applications of AI & virtual reality. This will change not only delivery of service, but also content: a massively high-tech environment will inevitably stimulate massive use of technology to enrich/redesign content models. As to whether this technology will become cheap and usable enough to be viable for small businesses, it can be argued that the new scenario could accelerate the push toward affordability and user-friendliness. Investment support from COVID-related public recovery funds may be crucial to enable the transition and define strategic leadership in the sector.