

Conference Report

EU Consumer Protection Policies: Market or Regulation?



Dr. Silvana Koch-Mehrin, MEP, Dr. Wolf-Dieter Zumpfort, Commissioner Meglena Kuneva, Ph.D., Prof. Dr. Lucia A. Reisch, Prof. Dr. Michael Eilfort.

2 Prof. Dr. Michael Eilfort
Director, Stiftung Marktwirtschaft

3 Meglena Kuneva, Ph.D.
European Commissioner for Consumer Affairs

5 Dr. Silvana Koch-Mehrin, MEP
Vice-President of the Alliance
of Liberals and Democrats for Europe

7 Prof. Dr. Lucia A. Reisch
Copenhagen Business School, Chairwoman of the
Academic Advisory Council for Consumer and Nu-
trition Policy of the Federal Ministry for Nutrition,
Agriculture, and Consumer Protection (BMELV)

8 Dr. Wolf-Dieter Zumpfort
Vice-Chairman of the Board of Directors
of the Friedrich-Naumann-Stiftung für die Freiheit

At first sight, consumer policy and consumer protection have very positive connotations. Can there be anything wrong with protecting consumers from harm and the risk of buying overpriced, low-quality or even dangerous products and services? Even before the current, severe economic crisis there have been ongoing debates both on the EU level and in the member states on how to protect and strengthen the interests and rights of consumers. Both national governments as well as the European Union have tried to increase consumers' welfare with various legislative measures and are continuing to do so.

What should be the goal of consumer policy? And what kind of consumer policy do we really need in a market economy based on individual freedom, self-determination and responsibility for oneself? Is there a trade-off between consumer protection and market freedom or – on the contrary – can consumer policy help

to increase the efficiency of markets, for example via special information requirements and minimum standards? And how justified are fears that an overly patronizing nanny state will strangle the economy with excessive bureaucracy and thus impede innovation?

In order to discuss these questions and to stimulate the discussion on consumer policy, *Stiftung Marktwirtschaft* and the *Friedrich-Naumann-Stiftung für die Freiheit* jointly organized the “EU Consumer Protection Policies: Market or Regulation” conference in Brussels on March 31st, 2009. The discussion was chaired by Dr. Jürgen Wickert, Director of the International Political Dialogue of the Friedrich-Naumann-Stiftung für die Freiheit.



Prof. Dr. Michael Eilfort and Dr. Jürgen Wickert welcomes Commissioner Meglena Kuneva.

Welcome



Prof. Dr. Michael Eilfort

Director, Stiftung Marktwirtschaft

In his welcoming speech, Prof. Michael Eilfort, Director of *Stiftung Marktwirtschaft*, illustrated the broad range of aspects that needs to be kept in mind when discussing consumer policy and consumer protection. He emphasized that on the one hand the necessity for consumer protection via government regulation seems

to be very limited. In a competitive market economy, suppliers of goods and services can only have long-run economic success if they satisfy the preferences of their consumers; therefore, they have a strong interest to supply goods and services that are both affordable and of high quality. From this point of view, the best thing a government could do is to provide clear-cut liability rules and a properly working legal system in order to enforce private contracts, but there is very little scope for direct government regulation.

On the other hand, Eilfort acknowledged that significant transaction costs, incomplete and asymmetric information as well as irrational behaviour of consumers can impair this “market mechanism” of consumer protection and leave room for potentially welfare-increasing government intervention. In an international context, for example cross-border trade, this could be even more the case due to additional complications for consumers which might arise. There are, therefore, few black-and-white answers regarding consumer policy.

Finally, Eilfort suggested that a balanced approach is also advisable when it comes to the question: who should be in charge of consumer policy – the European Union or the member states? After all, both have good arguments on their side.

EU Consumer Policy Strategy: Is the Market Failing?

Meglana Kuneva, Ph.D.

European Commissioner for Consumer Affairs

Meglana Kuneva, Ph.D., European Commissioner for Consumer Affairs, emphasized at the beginning of her statement that consumer policy should not be reduced to mere consumer protection – instead consumer policy is a much more comprehensive concept which aims at maximizing the welfare of consumers and giving them the necessary tools and confidence. In her opinion, both businesses and consumers should play an equally important role in markets.

Given the global economic downturn and its dramatic consequences, many consumers have to face an increasingly precarious situation that cannot be ignored. She concluded that consumer policy is not a luxury, as some may argue, but more important than ever, especially for consumers with little disposable income. Kuneva expected that for consumers with tight budgets who are looking for attractive offers, cross-border shopping might become more and more attractive. Today, cross-border trade by private consumers counts for only 6% of total consumption; therefore, the creation of a favorable environment for cross-border trade, and especially on-line trade in the internal market would help businesses and consumers alike. With this goal in mind, she has proposed a new directive on consumer rights that would harmonize the rules and, therefore, foster purchases across countries in the European Union. A modern set of rights would provide consumers with better prices and more choice in all 27 member states. Among its key elements are more



rights on delivery, a 14-day period during which consumers can easily withdraw from distance and off-premise contracts, a ban on pre-ticked boxes in online-trade and new rules for online contracts.

Commissioner Kuneva pointed out that there have also been a lot of achievements in EU consumer policy in the past years. One example is the Consumer Markets Scoreboard, a non-legislative tool, which should help to make the internal market more transparent and accountable to citizens by measuring key indicators such as, for example, the degree of consumer satisfaction, the prices they pay and the level of complaints. The results of the second edition of the Consumer Markets Scoreboard would indicate that three areas – energy, banking and transport – are causing the most problems for consumers. Kuneva explained that based on the results of the scoreboard, additional measures should be taken. These would depend on if there are legislative gaps, enforcement gaps, a lack of information or weak consumer organizations.

Further examples of past achievements in consumer policy are the consumer credit directive, the timeshare directive and the regulation of airline ticket-sales via the internet. In order to improve the possibilities of obtaining redress for consumers whose rights have been infringed, the Commission has started a consultation process on consumer collective redress. The Commissioner added that consumer policy is not limited to the



Commissioner Meglena Kuneva, Ph.D., predicts “prosumers” instead of consumers and producers in the near future.

internal market, but that she has also worked together with the USA and China to improve cooperation.

If there is a time when consumer policy – which is a “brave new world full of opportunities” – was needed,

it is now. Commissioner Kuneva concluded her statement with a quote from Alvin Toffler, who had predicted that there would be no more consumers and no more producers anymore in the 21st century, but there would be “prosumers”.



The speakers on the podium: Dr. Wolf-Dieter Zumpfort, Dr. Silvana Koch-Mehrin, Dr. Jürgen Wickert, Commissioner Meglena Kuneva, Ph.D., Prof. Dr. Lucia A. Reisch and Prof. Dr. Michael Eilfort.

Responsible Citizens Instead of a Nanny State

Dr. Silvana Koch-Mehrin, MEP

*Vice-President of the Alliance of Liberals
and Democrats for Europe*

Dr. Silvana Koch-Mehrin, MEP and Vice-President of the Alliance of Liberals and Democrats for Europe, called the European consumer policy one of Europe's big success stories; this is especially true from the perspective of the citizens. Koch-Mehrin pointed out that they could see what the EU does for them in their everyday lives more easily than in other areas. She also acknowledged that markets are developing very fast these days which adds new challenges to consumer policy.

In her opinion, there is no doubt that consumer policy is strongly needed. On the EU level, she endorsed a joint political approach to give consumers the best information possible in order to help them in their decision-making process on certain goods and services. In addition, a reliable legal framework as part of the rule of law in the European Union and the member states is indispensable; therefore, to her the question was not if consumer policy is needed or not, but to what extent it is needed and which instruments should be used.

On a very fundamental, almost philosophical level, Koch-Mehrin concentrated on the role and the self-image of the individual in society. Can citizens rely on education to make their own decisions? Do they know what is best for them and are they able and willing to



take the risks of their decisions? Or rather should the overall concept consist more of citizens needing protection and guidance in a way that decisions are made for them? Since the liberal perspective, emphasizing individual freedom, strongly adheres to the first concept, Koch-Mehrin cautioned that consumer policy is always at risk of coming up with regulatory procedures which are – from a liberal point – much too extensive because they pose a threat to individual freedom and self-determination.

The fuzziness of consumer policy – where does it start and where does it end – might easily lead to some kind of nanny state. Referring to the statement of Commissioner Kuneva, Koch-Mehrin doubted that all the important issues of energy, banking and transportation really belong to the area of consumer policy – otherwise the field for consumer policy would be de facto unlimited. Instead she suspected – based on her own experience as a politician – that there is a permanent tendency of all political institutions to increase their field of activity. As a striking example, she mentioned the ban of tobacco advertisement. Since it was not possible to achieve this goal via the channel of health policy, a second attempt was taken based on consumer protection.



According to Koch-Mehrin, developments like this pose a threat to the success story of consumer policy in the EU so far. More and more Europeans feel very critical vis-à-vis the European institutions – they are especially critical about too much regulation and bu-

reaucracy. She concluded that the European Union should concentrate on a few really important issues, where the EU could provide added value, instead of getting lost in details of excessive regulation in too many areas.



The auditorium in the European Parliament Building in Brussels.

To Nudge or not to Nudge: Towards Evidence-based Consumer Policy

Prof. Dr. Lucia A. Reisch

Copenhagen Business School, Chairwoman of the Academic Advisory Council for Consumer and Nutrition Policy of the German Federal Ministry for Nutrition, Agriculture, and Consumer Protection (BMELV)

In her lecture, Prof. Lucia A. Reisch from the Copenhagen Business School gave an overview of the conceptual base of modern consumer policy and its historical development. In her introductory remarks she explained that the title of her presentation quotes a very influential book for modern consumer policy from Richard Thaler and Cass Sunstein: “Nudge – Improving Decisions about Health, Wealth, and Happiness”. Based on the concept of behavioural economics, this approach has given consumer policy new momentum. In order to appreciate the improvements of this new approach, Reisch compared it to older concepts of consumer policy – starting with the paradigm of neoclassical economics. In such a world of perfect markets, where prices include all relevant information and sovereign consumers with stable individual preference orders act fully rationally, there is no need for consumer policy aside from a good competition policy.

Reisch continued that in the 1970s it became evident that information is very important and can lead to market inefficiencies. Their most important sources are asymmetric information and bounded rationality on the side of the consumers, who do not maximize their welfare but follow a satisficing strategy. Following this approach, consumer policy would foremost call for more – regulated – information to cure the market inefficiencies. Other tools include signalling, standards



and a ban on misleading information. Although Reisch acknowledged that additional information can play an important role on imperfect markets, she warned that too much information could actually worsen things as it might create a poverty of attention; therefore, one must consider additional aspects to make markets more efficient.

Reisch explained that modern consumer policy aims to make markets more efficient by focusing on the demand side of the market and not – as its priority – on protecting consumers. She specified various potential constraints for market efficiency on the demand-side including

- transaction costs,
- the context of information,
- a restricted ability and willingness to process information, and to make “informed decisions” on the side of the consumers,
- emotions and motivations,
- behavioural anomalies.

Empirical research shows that only about 10% of all consumers’ decisions are well-considered and rational.

Many of these aspects are in the focus of behavioural economics. This research area is between psychology

and economics does not only analyze how consumers empirically include information in their decision-making behaviour, but also how the context influences their action. According to Reisch, empirical research shows that context is the key for influencing consumers' decisions; therefore nudging, which is less rigorous than regulation but more than just providing information since it additionally provides a special context to steer people's decisions in a specific direction, plays an important role in consumer policy. Reisch emphasized that it is not only the government who tries to "nudge" people, but also NGOs and companies; therefore, according to Reisch, the important political questions are: who is doing the "nudging"; who is setting the defaults; and who is setting the context?

Behavioural economics also suggests that it could be helpful to reduce information, to keep things simple and to get rid of unnecessary regulation. Instead there is a need for customized instruments. In her opinion, this new policy thinking is a big chance since it does not mean that better consumer policy needs more regulation.



Closing words



Dr. Wolf-Dieter Zumpfort

Friedrich-Naumann-Stiftung für die Freiheit

Concluding the conference, Dr. Wolf-Dieter Zumpfort, Vice-Chairman of the Board of Directors of the Friedrich-Naumann-Stiftung für die Freiheit, summarized the key messages of the three speakers and from the discussion. He especially focused on the intended full harmonization of consumer rights in the EU. If followed through, this would create a severe dilemma. For member states with a currently very high and sophisticated level of protection, a common level of consumer protection standards would imply a lower degree of protection; but there are also other countries, whose current protection level is much lower and which might suffer from the additional bureaucratic work. He argued, therefore, for an approach to consumer policy much more in line with the principle of subsidiarity. For him, the big question remained: what is the EU allowed to do?

Publishing details

Susanna Hübner (v.i.S.d.P.) Stiftung Marktwirtschaft Charlottenstr. 60 10117 Berlin Tel. +49 (0) 30 206057-33 www.stiftung-marktwirtschaft.de

The conference took place in Brussels, March 31st, 2009.