

COUNCIL**Council****REPORT ON THE IMPLEMENTATION OF THE RECOMMENDATION OF
THE COUNCIL ON CONSUMER POLICY DECISION MAKING****(Note by the Secretary-General)**

JT03451997

1. This note presents a report by the Committee on Consumer Policy (CCP) on the implementation of the *Recommendation of the Council on Consumer Policy Decision Making* [[OECD/LEGAL/0403](#)] (hereafter, “the Recommendation”) and the CCP’s conclusions regarding its continued relevance or whether it requires an update. The report is reproduced in the Annex to this document.

Background

2. The Council adopted the Recommendation on 12 March 2014 [[C\(2014\)30](#)] to aid policy makers to identify and evaluate consumer problems, and to design more effective consumer policies and enforcement actions. The Recommendation was prepared based on a Consumer Policy Toolkit (OECD, 2010^[1]), which the CCP developed in 2010 to better understand the factors underlying consumer decisions and to assist policymakers in adopting rigorous, evidence-based approaches to consumer policy, as well as to use the analytical framework in making enforcement decisions.

3. The Recommendation sets out a six-step process for the development and implementation of consumer policy decision making. It also encourages promoting the six-step process at all levels and branches of government, and to engage with various stakeholders in this process.

4. The Recommendation instructs the CCP to:

- Promote the Recommendation with Members and non-Members;
- Serve as a forum to share experience on the implementation of the Recommendation;
- Monitor its implementation and effects on policy making, and report to Council within five years of its adoption, and as appropriate thereafter.

Methodology

5. The main tool used to collect information on the implementation of the Recommendation was a questionnaire, which was discussed at the CCP’s 96th Session in November 2018 [[DSTI/CP/M\(2018\)2](#)] and sent to Adherents¹ as well as CCP Participants and Invitees on 16 January 2019, as a part of dissemination efforts for the Recommendation.

6. As of 30 August 2019, 24 countries as well as the European Union (EU) provided responses to the questionnaire (collectively referred to as the Respondents), including 21 Adherents (Argentina, Canada, Chile, Czech Republic, Denmark, France, Greece, Hungary, Israel, Japan, Latvia, Mexico, Netherlands, New Zealand, Norway, Peru, Portugal, Switzerland, Turkey, the United Kingdom, and the United States), and three non-Adherents (Brazil, Colombia, and South Africa).

Process

7. At its 97th Session in April 2019, the CCP discussed a preliminary synthesis report of the survey responses, which includes implementation initiatives taken by Respondents

¹ All OECD Members as well as Argentina and Peru. Argentina became an Adherent after the monitoring process started.

and the CCP, and points to key challenges identified in implementing the Recommendation. Delegates from Chile, Denmark, Japan and Netherlands presented their efforts and initiatives carried out to implement the Recommendation. Based on the preliminary synthesis report and the presentations, the CCP discussed preliminary conclusions of the review, and possible next steps [[DSTI/CP/M\(2019\)1](#)]. Following the meeting, the Committee agreed to invite more responses to the questionnaire, as well as written comments on the report.

8. Based on the input received from the CCP at and since the 97th Session, a revised draft report was circulated to the Committee for comment on 28 June 2019 [[DSTI/CP\(2019\)4/REV1](#)]. The draft report was approved by the CCP on 30 August 2019 [[DSTI/CP\(2019\)4/REV2](#)].

Dissemination

9. The CCP promoted the Recommendation through dedicated discussions of implementation of the Recommendation at its meetings in April 2014 [[DSTI/CP/M\(2014\)1](#)] and October 2014 [[DSTI/CP/M\(2014\)2](#)]. In addition, the Secretariat promoted the Recommendation in other regional and international fora.

10. Adherents have played a vital role in the dissemination of the Recommendation within and across borders, highlighting its value to national stakeholders and the international community. Through the survey responses, Respondents indicated that they promoted the Recommendation within governments at local and national levels, as well as with stakeholders such as consumer organisations, businesses, and experts. Respondents also promoted the Recommendation in international fora or facilitated use of the Recommendation by non-Members.

11. The Recommendation gained wide international recognition as a policy instrument, and has been to date adhered to by two non-Members (Argentina and Peru).

Summary and conclusions

12. Since the adoption of the Recommendation, significant and continued efforts have been made to develop and implement the six-step consumer policy decision making process set out in the Recommendation, in close co-operation with various stakeholders across the government. In addition, effective dissemination of the Recommendation's provisions has been achieved by the CCP and by Adherents respectively.

13. The Recommendation has proven influential to foster a more systematic, and evidence-based approach to consumer policy decision making. In light of the ongoing and complex digital transformation, which heightens the need for authorities to cooperate within and across borders to address consumer protection issues, the Recommendation provides a robust framework for the effective development of consumer laws and regulations, and enforcement.

14. In conclusion, the Recommendation remains highly relevant and provides useful guidance. However, more implementation efforts are needed, that could be further monitored by the CCP, which agreed to report back in five years to Council. In particular, there is a need for increased promotion of evidence-based policy decision making through, for instance, the development of practical methodologies on how to quantify consumer detriment and how to assess the impact of policy and regulatory interventions.

15. Moreover, while the text of the Recommendation does not require any revisions at this stage, the CCP agreed to continue exploring: i) how the use of behavioural insights relates to the six-step process, including how such insights can provide evidence for the policy decision making process, and their limitations; and ii) the importance of consumer and business education initiatives to the policy decision making process.

Proposed action

16. In the light of the preceding, the Secretary-General invites the Council to adopt the following draft conclusions:

THE COUNCIL

- a) noted document [C\(2019\)126](#), in particular the report set out in its Annex, and agreed to its declassification;
- b) invited the Committee on Consumer Policy to continue promoting and monitoring the implementation of the Recommendation of the Council on Consumer Policy Decision Making and to report to the Council thereon in five years.

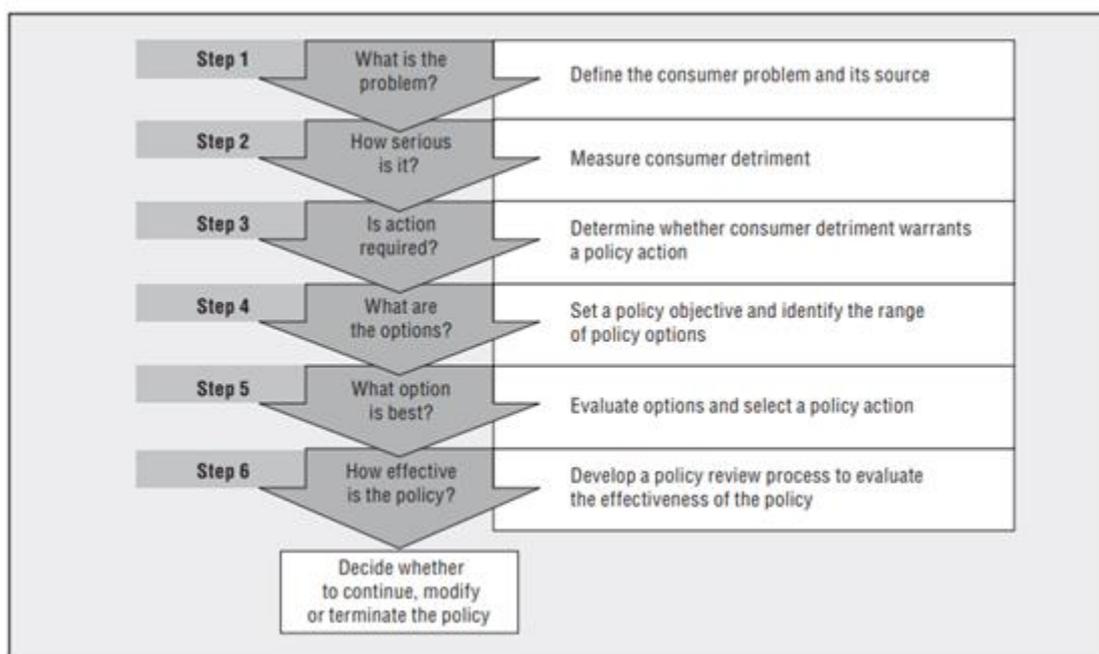
ANNEX. REPORT ON THE IMPLEMENTATION OF THE RECOMMENDATION OF THE COUNCIL ON CONSUMER POLICY DECISION MAKING [[OECD/LEGAL/0403](#)]

Background

Introduction

1. After conducting an in-depth review of the consumer policy making process, in 2010, the Committee on Consumer Policy (CCP) developed a Consumer Policy Toolkit (OECD, 2010^[1]) (Toolkit), which is a practical guide aimed to provide a framework to aid policy makers in using a systematic approach to identify and evaluate consumer problems, and to design more effective consumer policies. The Toolkit builds on the Committee's collective experience in addressing challenges in policy making, serving as the basis for a CCP workshop on communication services held in 2011 in co-operation with the former Committee for Information, Computer and Communications Policy and its Working Party on Communication Infrastructures and Services Policy [[DSTI/CP/ICCP\(2012\)2/FINAL](#)]. Drawing on findings from information and behavioural economics, the Toolkit is intended to better understand the factors underlying consumer decisions, as well as to assist policymakers in adopting rigorous and evidence-based approaches to consumer policy, and in using the analytical framework for making enforcement decisions (see Figure 1).

Figure 1. Consumer policy making steps



Source: OECD (2010^[1])

2. Drawing on the Toolkit framework, the CCP developed the OECD *Recommendation of the Council on Consumer Policy Decision Making* [[OECD/LEGAL/0403](#)] (hereafter the Recommendation), which was adopted by Council in

2014 [[C\(2014\)30](#)]. The Recommendation provides a framework for the development and implementation of a process for making decisions regarding policy formulation (para.6) and enforcement actions (para.8), establishing a six-step process for designing consumer policy decision making. It also encourages to promote the six-step process at all levels and branches of government (para.7), and to engage with various stakeholders (para.9).

3. The Recommendation is open to non-Member adherence. To date, two non-Members have adhered to the Recommendation: Argentina in May 2019 and Peru in August 2018.

Overview of recent developments

4. In line with the analytical policy decision making approach under the Recommendation, the OECD *Recommendation of the Council on Consumer Protection in E-commerce* [[OECD/LEGAL/0422](#)] (“the E-commerce Recommendation”) was revised in 2016, which provides a robust foundation to guide the development of consumer policies in online transactions [[C\(2016\)13](#)]. Specifically, the E-commerce Recommendation contains a provision pointing to the importance of improving the evidence base for e-commerce policy making through (para.53. i):

- The collection and analysis of consumer complaints, surveys and other data;
- Empirical research based on the insights gained from information and behavioural economics.

5. The E-commerce Recommendation also calls for enhanced cooperation and coordination in investigations and enforcement activities to address the specific challenges faced by consumers in global e-commerce (para. 54).

Purpose of the report

6. The Recommendation instructs the CCP to “...monitor the implementation of the Recommendation and its effects on policy making and report to Council within five years of its adoption and as appropriate thereafter” (Section IV iii).

7. As part of the OECD-wide Standard-Setting Review, the CCP agreed in its 2016 Action Plan for the Review of OECD Legal Instruments under its responsibility [[DSTI/CP\(2016\)11/REV1](#)] that “as [it] continues to work on behavioural insights, consideration could be given when monitoring its implementation as to whether the Recommendation could be revised to reflect elements of that work.”

8. This report intends to provide an assessment of the dissemination and implementation of the Recommendation, as well as to assess its continued relevance. It also provides conclusions as to the need for any further work to improve implementation, or areas where it could be updated.

Methodology

9. At its 96th Session in November 2018, the CCP agreed to prepare a short questionnaire [[DSTI/CP\(2018\)15/REV1](#)] to gather information on the implementation of the Recommendation and Respondents’ views on the need for any changes to be made in its text. Reflecting discussion at the CCP’s 96th Session in November 2018, the dedicated questionnaire was sent to Adherents, as well as CCP Participants and Invitees, on 16 January 2019, as a part of dissemination efforts of the Recommendation.

10. This report was prepared on the basis of responses received from the following 24 countries as well as the European Union (EU) (referred together as the Respondents): 21 Adherents (Argentina, Canada, Chile, Czech Republic, Denmark, France, Greece, Hungary, Israel, Japan, Latvia, Mexico, Netherlands, New Zealand, Norway, Peru, Portugal, Switzerland, Turkey, the United Kingdom, and the United States) and 3 non-Adherents (Brazil, Colombia, and South Africa).

11. The report also benefits from the discussions at the CCP meetings where there were discussion dedicated to the implementation of the Recommendation held in April 2014 [[DSTI/CP/M\(2014\)1](#)] and October 2014 [[DSTI/CP/M\(2014\)2](#)], as well as the discussions on relevant subjects such as use of behavioural insights in consumer policy and measurement work.

Process

12. At its 97th Session in April 2019, the CCP discussed a preliminary synthesis report of the survey responses, which includes implementation initiatives, and points to key challenges identified in implementing the Recommendation. Delegates from Chile, Denmark, Japan and Netherlands presented their efforts and initiatives carried out to implement the Recommendation. Based on the preliminary synthesis report and the presentations, the CCP discussed preliminary conclusions of the review, and possible next steps. The Committee agreed to invite more responses to the questionnaire, as well as written comments on the report [[DSTI/CP/M\(2019\)1](#)].

13. Based on the comments received from the CCP at, and since the meeting, as well as additional country responses to the questionnaire, a revised report was circulated to the Committee for comment on 28 June 2019 [[DSTI/CP\(2019\)4/REV1](#)]. The draft report was revised on the basis of the comments received and approved by the CCP on 30 August 2019 [[DSTI/CP\(2019\)4/REV2](#)].

Dissemination

Dissemination by the CCP

14. Although the Recommendation primarily addresses Adherents and points to their implementation responsibility, it also instructs the CCP to promote its principles with Members and non-Members (section IV). Consistent with the above provisions, the CCP has undertaken significant efforts to promote the Recommendation and its implementation through OECD publications and related discussions at its meetings.

15. At its 88th session in October 2014, the CCP discussed ways to disseminate the Recommendation [[DSTI/CP/M\(2014\)2](#)]. Updates were provided on activities undertaken for its promotion, which included the release of an OECD newsletter¹ featuring the Recommendation, posted on the OECD's website, as well as presentations made at the International Consumer Protection and Enforcement Network to encourage its use in law enforcement activities. During the session, the delegate of the United Nations Conference on Trade and Development (UNCTAD) noted that the Recommendation was being actively used by the organisation in its work with its members.

16. In addition, the Secretariat of the CCP promoted the Recommendation in other regional and international fora. For instance, in April 2015, the Secretariat made a presentation at a European Consumer Protection Conference to introduce the Recommendation and suggest ways to implement it². Furthermore, the six step process

under the Recommendation has been promoted in a G20 Toolkit for Protecting Digital Consumers (OECD, 2018^[2]).

Dissemination by Adherents

17. Adherents have played a vital role in the dissemination of the Recommendation within and across borders, highlighting its value to both national stakeholders and the international community.

18. In line with paragraphs 7 and 9 of the Recommendation, Respondents indicated that the Recommendation has been promoted within governments at local and national levels, as well as with stakeholders such as consumer organisations, businesses, and experts. At the international level, the Recommendation has been shared and described to non-Members through bi-lateral dialogues and international conferences. For example, the National Consumer Agency of Chile disseminated the six-step process in the Recommendation to its neighbouring non-Adherents, such as El Salvador and Guatemala, as part of technical cooperation programmes. In addition, the US Federal Trade Commission (US FTC) used the Recommendation in developing a case study on negative options that was presented at the African Consumer Protection Dialogue in 2014.

19. The responses to the questionnaire have shown that overall, dissemination has been effective through Respondents' increased awareness of the role of the six-step process to improve policy formulation and enforcement activities, and of the importance of government-wide implementation and stakeholder engagement in the process. Responses however suggest that more dissemination efforts are yet needed to better achieve the goals of the Recommendation.

Implementation

20. This section presents aggregate analysis of responses to the questionnaire, as well as good practices to illustrate how Adherents have implemented the Recommendation.

21. It first looks at how the six-step process has been implemented in policy decision making (para.6) and law enforcement (para.8), with a brief discussion of some implementation challenges. It then discusses efforts made in promoting the use of the decision making process across government (para.7), and stakeholder engagement in the process (para.9). The section also provides views on the continued relevance and need an update of the Recommendation.

22. As described in more detail below, aggregate survey responses suggest that while some Respondents have identified challenges with respect to certain aspects of the implementation, significant and ongoing efforts have been made to achieve the goals of the Recommendation. This section follows the structure of the Recommendation, providing key information derived from survey responses.

23. This section also provides an overview of the CCP's implementation efforts.

Implementing the process for policy decision making and enforcement

24. The Recommendation establishes a six-step process for designing consumer policy decision making (including enforcement actions), which provides a framework for identifying consumer problems and assessing detriment, and for determining what actions, if any, should be taken to address the problems (see Box 1).

**Box 1. Six-step process for consumer policy decision making
(extract of the Recommendation)**

- i. Defining the nature and source of a problem; identifying the relevant authorities that would be best placed to intervene; and considering the extent to which potential solutions might conflict with other public policy objectives.
- ii. Assessing the nature and magnitude of consumer detriment. This involves considering the number and types of consumers that may be affected by the problem and the ways in which they may be harmed.
- iii. Determining whether an action is warranted. Such a determination should consider the level of consumer detriment, any disproportionate impacts on certain types of consumers (including those who are vulnerable or disadvantaged); the anticipated duration of the consumer detriment; and the likely consequences of no action being taken.
- iv. Setting a desired policy objective, and identifying the range of policy options and tools that could be used to address a problem. Measures that other stakeholders could take to achieve such objective should also be considered in this context.
- v. Evaluating the cost and benefits of each policy option taking into account both quantifiable and qualitative information. The resources devoted to such an analysis should be proportionate to the likely impact of the options under consideration. Thus, larger policy changes might require more personnel and resources than smaller ones. The effects that the options being evaluated could have on competition and other policy areas, such as the environment, and health and safety should also be considered.
- vi. Developing a review process to evaluate periodically how well the selected policies continue to meet their objectives and whether modifications may be needed.

Note: see [OECD/LEGAL/0403](#) for the full text of the Recommendation

25. Specifically, the Recommendation calls for developing and implementing the process for making consumer policy decisions (para.6). The Recommendation also encourages to apply the process in enforcement actions (para.8), which aims to help determine which violations of consumer law should be pursued, and which types of enforcement actions should be taken.

Overview of the responses

26. In accordance with the provisions set out in the Recommendation, a number of Respondents have developed or implemented a framework to ensure a systematic and evidence-based decision making approach to consumer policy formulation and law enforcement. For many Respondents, the six-step process set out in the Recommendation has become a norm in policy development and enforcement activities.

27. In addition, a number of Respondents reported that some of the steps, including the assessment of the nature and magnitude of consumer detriment, and evaluation of potential policy options (cost benefit analysis and regulatory impact assessment), are now embedded in legislative requirements for certain types of policy actions. Such requirements are

commonly observed in policy actions including the creation or amendment of laws and regulations. The degree to which the evaluation process was rigorously implemented may, however, vary depending on the need for swift policy action and the political situation.

28. Many Respondents assess the nature and magnitude of consumer detriment using input from, for example, consumer complaints, surveys, research and consultations with relevant authorities and stakeholders. Some have made efforts to introduce and maintain national consumer complaint databases:

- In **Brazil**, National Civil Defence System (SINDEC) and its online platform (“Consumidor.gov.br”) offer data on consumer detriments and areas requiring policy attention.
- The Consumer Affairs Agency of **Japan** developed a consumer complaint database, which collects the information from local governments and accumulates annually around 900,000 consumer complaints. The complaint data has been used to assess the consumer detriment associated with specific product, as well as a basis for legislative reform or enforcement activities.
- In the **United States**, the US FTC assesses detriment, in part, using information from complaints filed with the Consumer Sentinel Network, a secure online database. In 2018, the US FTC received nearly 3 million consumer reports. It has also conducted empirical economic research to identify personal characteristics that are correlated with a consumer being more likely to become a victim of mass-marketing fraud.
- Other initiatives are still in the planning stage, such as in **South Africa**, where the development of a national centralised consumer complaints database is being planned to gather better data and enable more comprehensive consumer policy analysis.

29. To better implement the six-step process, some Respondents have introduced new forms of consumer policy instruments to expand the range of policy options that may be used to better to meet the set policy objective. These instruments include, for instance, new or strengthened sanctions against breaches of consumer laws, enhanced information disclosure requirements, the development of standards and licensing schemes, and the introduction of alternative dispute resolution and class action schemes.

30. Policy reviews have also been commonly undertaken, often as a part of periodic policy analyses of existing measures or assessments of the need for new policy interventions. A number of Respondents have recognised that the Recommendation helps foster a monitoring and evaluation culture within consumer authorities. In many jurisdictions, consumer authorities have conducted a self-assessment of policy interventions on a regular basis.

- In **Turkey**, an advisory body, Consumer Council, conducted an annual review of the policy decisions and implementation with the participation of various stakeholders, including relevant public authorities, academics, industries and consumer organisations.
- In the **United States**, the US FTC schedules all of its regulations and guides for review on a ten-year cycle to ensure that they are up-to-date, effective, and not overly burdensome.

- In some, such as in **France** and **Japan**, policy reviews have also been undertaken by a legislative body or other independent public institutions.

Examples of implementation efforts in the development of laws and regulations

31. A number of Respondents have established and applied the decision making process in the Recommendation for policy development, such as creation of legislation, policy guidelines, as well as other policy actions in relation to consumer protection.

- Drawing on the Recommendation, in **Argentina**, the National Directorate for Consumer Protection applied the six-step process by developing a regulation, “Botón de Baja”, which requires internet and telecommunications service providers to offer accessible and easy-to-use procedures for consumers to unsubscribe from the services.
- In **Canada**, the Canadian Radio-television and Telecommunications Commission (CRTC) developed a Consumer Lens, which is an analytical tool that the agency has used to integrate consumer considerations into its decision-making and policy analysis.
- In **Denmark**, the government launched a 2018 consumer policy strategy aimed to ensure that the decision making steps are followed, including an assessment of the nature and magnitude of consumer detriment and evaluation of policy options in consultation with stakeholders. The strategy has been implemented in the context of, for example, an initiative aimed to reduce the number of consumers affected by passive consumption in relation to subscription. In addition, the Danish Competition and Consumer Authority is currently undertaking a review of the recently introduced law which aims to prevent a consumer from taking out a loan without careful consideration. Since its adoption, however, the law has not produced the intended effects to protect consumers. Consistent with the Recommendation, the authority is now assessing the law with a view to the possible introduction of further measures to better address consumer problems.
- Within the **European Union**, the Consumer Policy Directorate of the European Commission (EC) applied the six-step process for impact assessment required for any new initiative. The EC monitored consumer conditions and the enforcement of EU legislation across EU members and in different markets through a range of tools, including consumer scoreboards and in-depth consumer market studies. Existing laws are regularly assessed through evaluations and fitness checks to establish if they are still fit for purpose.
- In **Mexico**, the Consumer Protection Federal Agency developed the National Program for the Protection of Consumer Rights 2013-2018, which implements the six-step process set out in the Recommendation. For instance, the program took into account the assessment of consumer detriment when reviewing a national consumer complaint system and a registry scheme to prevent unwanted advertisements.
- In **New Zealand**, the Ministry of Business, Innovation and Employment applied the six-step process in a number of recent consumer policy initiatives. For instance, in reviewing the impact of reformed consumer credit laws, information about weaknesses in New Zealand’s consumer credit laws and consumer detriment were gathered from stakeholders, community providers and analysis of lender websites. Objectives were set to reduce this detriment, such as reducing levels of non-

compliance with lender responsibilities and reducing accumulation of debt from high-cost credit contracts. A largely qualitative analysis of the costs and benefits of various options was performed. A monitoring and evaluation plan is under development.

- In **Norway**, the Consumption Research Norway, a private research institute, conducted several studies to identify who are most likely to be vulnerable consumers³. The findings indicate that, compared to the elderly, young consumers tend to be more vulnerable in the digital market because of lower economic awareness and skills. In addition, the studies suggest that digital activities by young consumers, including their engagement with social media, may lead to increased privacy risks and more exposures to targeted advertising.
- In the **United States**, the US FTC uses many of the factors in the six-step process to develop regulations. For example, before establishing trade regulation rules to address industry-wide unfair or deceptive acts or practices, the US FTC analyses the nature and magnitude of detriment, sets forth the objectives that the Commission seeks to achieve, including possible regulatory alternatives under consideration, and weights the cost and benefits of each policy option, including the impact on other policy areas, such as competition. Indeed, by statute, the FTC must establish that the practice is “prevalent,” explain the objective that its proposal seeks to achieve, as well as possible regulatory alternatives under consideration, and obtain stakeholder input by inviting interested persons to provide information and data.

Examples of implementation efforts in law enforcement

32. A number of Respondents have also applied at least a part of the six-step process to identify priority enforcement areas, assess individual law violation cases, and to choose the enforcement actions that should be undertaken.

- In **Chile**, the National Consumer Agency applied the six-step process in an enforcement action against a bank which allegedly included an unfair contract term in an overdraft line of credit (a loan without sufficient amount funds in a borrower’s bank account). The agency took a class action against the bank in 2014 using the six-step process as a way to assess the nature and magnitude of consumer detriment and evaluate policy options, choosing to focus their efforts into just one institution and creating a change in the whole market. In 2018, the agency reached an agreement with the bank for over 30 million dollars as a compensation to affected consumers.
- In **Colombia**, consistent with the country’s Consumer Protection Law, the Superintendence of Industry and Commerce (SIC) must take into account the magnitude of consumer detriment when taking decisions about its enforcement actions and sanctions applied to individual cases. In addition, the SIC brought a case against a telecommunication company, which reportedly deceived consumers by claiming to provide free access to the internet up to 200MB. After assessing the nature and magnitude of consumer detriment through the offer and evaluating possible enforcement options, the SIC ordered the company to deliver the promised amount of internet access to each user who was deceived by the offer. Furthermore, the SIC developed in 2015 an online dispute resolution system, “SIC Facilita⁴”, which to date processed more than 56 000 consumer disputes. The consumer

complaint data on the platform was also used to identify areas requiring policy and enforcement attention.

- With the **European Union**, using the six-step process, the EC coordinated online sweeps, market surveillance actions and product testing conducted by the EU Member States.
- In **Hungary**, the Hungarian Competition Authority (GVH), in its enforcement action against paid endorsements posted by social media influencers, decided to accept the commitments submitted by the concerned influencers and closed the investigations. Although a number of enforcement actions could be taken, the GVH saw that the acceptance of commitments was the most effective since the commitments could act as an efficient and effective warning to other market participants.
- In **Latvia**, before setting priorities of enforcement activities, the Consumer Rights Protection Centre (CRPC) assesses consumer complaints data and consults with various stakeholders to identify focused action areas and develop an enforcement strategy. Drawing on the Recommendation, the CRPC also developed internal guidelines on how to select the right enforcement action on a case-by-case basis.
- In the **Netherlands**, the Authority for Consumers and Markets (ACM) has set out three criteria for prioritising the consumer problems that require intervention, in line with the Recommendation. These criteria include: i) consumer harm (actual or potential harm); ii) strategic interest (interest in politics and society; international interest; norm seeking/norm setting interest); and iii) accountability/return (can the ACM intervene effectively and efficiently? Is it the best placed agency to intervene?).
- In the **United Kingdom**, in April 2014, the Competition and Markets Authority (CMA) published work prioritisation principles⁵ to enable the agency to, for instance, adequately identify problems, and assess the need for intervention based on a cost/benefit analysis. The CMA is currently developing a six stage enforcement process model, covering problem identification; project development; investigation; enforcement; litigation, as well as case closure or follow-up.
- In the **United States**, the US FTC uses the criteria in the six-step process, such as the scale and duration of the detriment, or the consequences of taking no action and the effect on other stakeholders, to make decisions involving prosecutorial discretion such as whether to initiate an enforcement action or when to close investigations without recommending enforcement action. In the consumer protection area, economists from the US FTC's Bureau of Economics assess potential consumer protection enforcement actions not only for their immediate impact, but also for their longer-run effects on price, product variety, and overall consumer welfare, including effects on competition. Economists evaluate proposals for full-phase investigations, consent negotiations, consent settlements, and complaints. The US FTC's statutory test for unfairness requires the agency to analyse a number of factors including the nature of the detriment and countervailing impacts on competition and consumers before initiating enforcement actions. The agency must show that the practice causes substantial injury that is not reasonably avoidable by consumers themselves (e.g., that there is some seller behaviour that unreasonably creates or takes advantage of an obstacle to the free exercise of

consumer decision making), and is not outweighed by countervailing benefits to consumers or competition.

Challenges in implementing the consumer policy decision making process

33. Despite the significant efforts made to implement the Recommendation, some Respondents have identified a number of challenges. The need for increased efforts to implement evidence-based decision making for policy development and law enforcement has been pointed out. In particular, there is a shared recognition among Respondents of the need to develop better ways to measure consumer detriment, and to quantify the effects of such detriment for consumer policy and law enforcement activities.

Promoting the use of the decision making process across government

34. The Recommendation includes a provision concerning promotion of the use of the six-step process across all levels and branches of government, to address local, national and international consumer problems. It further states that such problems should include the ones associated with misleading, fraudulent or unfair trading practices in general, as well as consumer problems in specific sectors (para.7).

35. In general, various authorities in a country may address consumer protection issues and hence there is a need for effective co-operation within a government to address consumer problems. Indeed, a number of Respondents reported that they have promoted the use of the six-step process in policy development and law enforcement with their counterparts in a wide range of policy areas, at local, domestic and international levels. These policy areas include broadcasting, telecommunication, tourism, finance, electricity, and housing. For example:

- In **Argentina**, in September 2019, the National Directorate for Consumer Protection will organise, with assistance from the US FTC, a training session to educate their staff on how to apply the six-step process in consumer policy making.
- In **Denmark**, an intra-governmental website has been launched to share experiences of how the consumer authority developed a consumer policy based on behavioural insights with other authorities working within the field of consumer policy.
- Within the **European Union**, the EC's Consumer Policy Directorate stimulated cooperation and joint action taken by EU Member States in the enforcement of consumer, marketing and product safety laws. The EC also provided training for Member States' policy makers in law enforcement and in applying behavioural insights to consumer policy. Furthermore, the EC operates the Rapid Alert System⁶ for dangerous non-food products, which allows information exchange amongst EU/EEA Member States to enable action against products posing health and safety risks to consumers.
- In **New Zealand**, the Ministry of Business, Innovation and Employment helped other agencies to identify consumer detriment, and to explore a range of potential options that could address those issues. For example, advice was given from the department on the regulation of:
 - organic foods – a framework for countering potentially misleading representation of foods as 'organic'

- building products (e.g. glass, windows, ladders, and roof tiles) – addressing issues with building products that are not fit for purpose, or are misrepresented
- therapeutic products.
- In **Turkey**, the General Directorate for Consumer Protection and Market Surveillance (DGCPMS) used input from local authorities, such as consumer complaint data, market trends and policy recommendations, for policy making and law enforcement activities at national level. At the same time, the DGCPMS played a role of coordination and cooperation among other national public authorities in preparation for regulations and implementation related to consumer protection issues.
- In the **United Kingdom**, the CMA has promoted its work prioritisation principles to other enforcement agencies within the country, including the Gambling Commission and local authority Trading Standards departments.
- In the **United States**, the US FTC held a roundtable in 2010 with officials from other US federal agencies to promote the relevance of the six-step process for a wide range of US policy makers.

36. Many Respondents have also set up government-wide bodies, such as intragovernmental boards, committees, or working groups, to address consumer problems and discuss ways to improve consumer protection. Besides the consumer authority mainly responsible for formulating consumer protection laws or policies and/or enforcing those policies or laws, a wide range of authorities have joined such co-operative frameworks, including authorities for the tourism, telecommunication, finance, electricity, health, environment, and transportation sectors. Regular or ad-hoc meetings have taken place through the government-wide bodies, where the consumer authorities have identified and sought solutions for various consumer issues in co-operation with the relevant authorities. For the same purposes, memoranda of understanding with relevant authorities have been developed and maintained.

37. Those government-wide bodies have been playing an important role in promoting the use of the six-step process across all levels and branches of government. For example:

- In **Canada**, the Recommendation was promoted through the Consumer Measures Committee, which is made up of representatives from the federal government as well as every province and territory. The Committee has worked on harmonising laws, regulations and practices, and raising public awareness on consumer protection issues.
- In **Chile**, the National Consumer Agency integrated the six-step process into its internal advisory committee to review its policy initiatives.
- In the **Czech Republic**, an Inter-ministerial Working Group on Coordination of the Implementation of Tasks from the Approved Priorities has been established to effectively address consumer issues. The members of the working group consist of representatives from all the state administration bodies concerned, representatives of the main market surveillance authorities, as well as other stakeholders.
- In **Finland**, an internal executive group was set up to implement the Recommendation. The group was cross-sectorial, with members from consumer affairs, market research and competition affairs units.

38. Although significant efforts have been made to promote the use of the six-step process, some Respondents call for policymakers and law enforcement officials to further enhance the promotion of the Recommendation.

Engaging with stakeholders in the decision making process

39. The Recommendation calls for engaging with stakeholders from consumer organisations, affected firms and/or industry associations and subject matter experts, to obtain information, technical expertise and advice on the issues being addressed. It further provides that such consultation should be considered at each step of the decision making process, with particular attention to the steps when policy options are being formulated and evaluated (para.9).

40. A number of Respondents have taken steps to implement this provision, considering that engagement with stakeholders in the decision making process for both policy formulation and enforcement is part of the regular business of consumer authorities.

41. Some consumer authorities have conducted stakeholder consultations based on memorandum of understanding undertaken with stakeholders or through an intragovernmental consultative body. Such consultations may involve either a specific consumer issue or general policy considerations. In addition, a number of Respondents reported use of public consultations to seek views on proposed policy initiatives.

42. Stakeholders involved in the process typically include consumer organisations, representatives of certain types of consumers (e.g. vulnerable consumers) or businesses (e.g. online marketplaces and telemarketers), industry associations, academics, and experts in specific areas, such as technologists.

43. With respect to policy development, engagement with stakeholders has commonly taken place in the drafting of legislation, policy initiatives with major effects on consumers or businesses, and strategic documents such as green papers or consumer policy plans. A number of Respondents reported that it is mandatory to undertake such stakeholder engagement in certain steps of the policy making process, including formulation and evaluation of policy options. Examples of engagement in the phase of the policy development include:

- In **Canada**, the Office of Consumer Affairs provides funding to consumer organisations to undertake research into policy topics of interest to the government, and the results of the research may inform policy development or other policy initiatives to meet the needs of Canadian consumers.
- In **Hungary**, the GVH consulted with consumers to better understand their experiences in the market. Recently, the consumer engagement was applied in a market analysis launched in 2019 concerning digital comparison tools⁷.
- In **New Zealand**, in the review of consumer credit law described above, the authority conducted interviews with a wide range of stakeholders, including lenders, industry associations, consumer advocates, financial mentoring services, dispute resolution providers, and regulators, to better understand consumer situations and the impact of the legislation.
- In **Norway**, the ministry responsible for consumer policy finances specific projects carried out by the Consumption Research Norway and by the Norwegian Consumer Council. The projects include work on consumer detriment, consumer vulnerabilities, digitalisation, privacy, and sustainable consumption. Enforcement

actions and new legislation followed based on results of these projects, both at national and international levels.

- In **Peru**, with participation of government, and consumer and business associations, the National Council for Consumer Protection has proposed and developed a national policy of consumer protection, as well as a policy strategy paper.
- In the **United States**, the US FTC obtains stakeholder input through several mechanisms including public comments, hearings and workshops, and through calls for empirical research. Recent examples including the FTC's Hearings on Competition and Consumer Protection in the 21st Century, which have brought together a wide range of stakeholders to provide input on whether changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to the FTC's competition and consumer protection law, enforcement priorities, and policy and the FTC's PrivacyCon conferences, which brings together internationally renowned privacy and security experts to present their research on a range of topics.

44. In the enforcement area, some Respondents reported a range of stakeholder engagement through, for instance, obtaining advice in preparation for an annual enforcement strategy as well as seeking assistance and participation in specific enforcement activities (e.g. mystery shopping and market surveillance). Examples of engagement in the phase of the enforcement include:

- In **Latvia**, the Consumer Rights Protection Law has been enacted to enable consumer organisations to participate in enforcement activities, such as market surveillance and mystery shopping, as well as conducting assessment of consumer complaints and representing the interests of consumers in courts.
- In **Mexico**, the National Agreement for the Protection of the Rights of Consumers was launched to coordinate actions that promote and protect consumer rights, bringing together consumer authorities, businesses and consumer organisations. To date, 42 collaboration agreements with stakeholders have been signed.
- In **Portugal**, the Consumer Directorate-General (CDG) developed in 2017 guidance on marketing communication in social media to inform applicable advertising in the digital environment. The agency collaborated with businesses and social media influencers in its development of the guide. In addition, the CDG created the Electronic Complaints Book, which facilitates submission of consumer complaints through online system and effectively promote dispute resolution.

CCP's efforts to promote and support the implementation

45. Since 2014, the CCP has actively promoted and supported the implementation of the Recommendation through its work on improving the evidence-base for consumer policy, focusing on behavioural insights and measurement.

46. In April 2014, the CCP organised, as part of its 87th meeting, a session to share country experiences in implementing the Recommendation and discuss ways to promote it with OECD Members and non-Members [[DSTI/CP/M\(2014\)1](#)]. During the session, the Canadian delegate shared the CRTC's experience in using a Consumer Lens in its policy decision making process as a good implementation example.

Behavioural insights work

47. The Toolkit sets out a decision-making framework drawing on principles from information economics and advances in behavioural economics research to better understand the factors underlying consumer decisions. The Recommendation likewise recognises that insights gained from information and behavioural economics can bring benefits in developing, implementing and reviewing consumer policies (Preamble). It also recognises in its Preface that the ways in which businesses present information to consumers may affect the choices they make, particularly in light of certain behavioural biases.

48. Since the adoption of the Recommendation, the OECD expanded its work on behavioural economics, doing work in a range of policy areas on “behavioural insights,” which it defines as “(a)n inductive approach to policy making that combines insights from psychology, cognitive science, and social science with empirically-tested results to discover how humans actually make choices” (OECD, 2019^[3]). This work recognises that behavioural insights “covers a wider domain than economic decision-making and thus includes a wider set of behavioural insights than those relevant for that field” (OECD, 2019^[3]).

49. The CCP has similarly used this wider concept to explore ways to improve the evidence base for consumer policy. For instance, in April 2016, the CCP held a Roundtable on Behavioural Insights and Consumer Policy [[DSTI/CP/M\(2016\)1/CORR](#)] to assess how consumer policies have benefited from behavioural insights and to identify current challenges. The discussion highlighted a number of ways to reflect behavioural insights in the policy decision making process, including the use of consumer behavioural surveys, laboratory experiments, and randomised control trials to measure the effectiveness of policies and improve the evidence-base.

50. Drawing on the discussion at the roundtable and further research, the CCP developed a report (OECD, 2017^[4]) examining how behavioural insights have been used by governments and other public policy organisations within their consumer policy making process and policy initiatives. The report also shed a light on some of the challenges associated with applying behavioural insights to policy making, such as concerns about the external and internal validity of experimental results, as well as a lack of resources and time.

51. In addition to using behavioural insights in consumer policy in general, the CCP has looked at the policy implications of behavioural insights in specific topics. For instance, the CCP organised a Roundtable on Behavioural Insights and Online Disclosures at its meeting in November 2017 to discuss whether and how to use findings from behavioural insights to improve the design of information disclosures [[DSTI/CP/M\(2017\)2](#)]. Drawing on lessons from the discussion and behavioural insights literature, the CCP published a report on information disclosures (OECD, 2018^[5]) which discusses how best consumers can benefit from information disclosures when shopping online, especially how such disclosures should be communicated to consumers.

52. Furthermore, in April 2018, as part of the CCP's work on behavioural insights and the protection of digital consumers, the Committee held a roundtable examining emerging trends and issues around online advertising [[DSTI/CP\(2018\)12](#)]. The discussion highlighted consumer issues emerging from online behavioural advertising, which may be used to target behavioural biases or consumer vulnerabilities and hence potentially be used to manipulate consumer decision making. The CCP further developed a report (OECD, 2019^[6]) to provide an introduction to the complex landscape of online advertising and to

outline the potential benefits and risks for consumers, drawing on relevant behavioural insights literature.

53. Additional work underway within the CCP includes the development of a laboratory experiment aimed to understand consumer behaviour towards online disclosures on personalised pricing, drawing on lessons from behavioural insights. At its session in April 2019, the CCP discussed a proposed methodology for the experiment [[DSTI/CP/M\(2019\)1](#)], the initial results of which will be presented at the CCP's 98th session in October 2019.

Measurement work

54. As indicated in the six-step process in the Recommendation, promoting evidence-based approaches to consumer policy, especially measurement of consumer detriment and the effect of agency interventions, is an important element of the CCP's work programme. In 2017, the Committee released findings from an online survey of 10,000 consumers in ten EU Member States regarding the drivers of consumer trust in peer platform markets (OECD, 2017^[7]). At its 97th session in April 2019, the CCP agreed to develop a feasibility study on measuring consumer detriment, as well as the impact of consumer agency activities and consumer policy, which will support discussion at a roundtable to be held during the CCP's October 2019 session [[DSTI/CP/M\(2019\)1](#)].

Summary and Conclusions

55. Findings from the questionnaire suggest that since the adoption of the Recommendation, Adherents have made significant and continued efforts to develop and implement the six-step process set out in the Recommendation, in close co-operation with various stakeholders across the government. As such, the Recommendation has proven influential to foster a more systematic, evidence-based approach to policy decision making. In today's complex digital transformation where a number of authorities across disciplines need to cooperate to address consumer protection issues, within and across borders, the Recommendation remains highly relevant and provides a robust framework for the effective development of laws and regulations and enforcement.

56. When asked about a need for changes to any part of the Recommendation, many Respondents stressed that rather than changing the text of the Recommendation, improving its implementation would be more important at this stage, including through an enhanced evidence-based approach. Some responses however identified the following areas for possible future revisions:

- Adding a more specific provision on the use of behavioural insights in policy formulation and in determining the types of practices that might warrant law enforcement; and
- Referring to the importance of consumer education and business outreach campaigns to the policy decision making process.

57. Accordingly, the Recommendation remains highly relevant and does not require any change at this stage. If properly implemented, the Recommendation can continue to provide an effective and robust framework for consumer policy decision making.

58. In addition, the Recommendation was effectively disseminated within and across borders, increasing awareness of the benefits of using the systematic and evidenced based

approach in policy development and law enforcement activities. Dissemination was achieved in three ways:

- to stakeholders within their jurisdictions;
- to non-Members, especially in Latin America and Africa – as demonstrated by the adherence by Argentina and Peru, as well as participation in the survey of Brazil, Colombia and South Africa;
- through discussions of its implementation and related work at CCP meetings and with other international fora.

59. More dissemination efforts are however necessary to better achieve the goal of the Recommendation.

60. In conclusion, there is a need for increased efforts to implement and disseminate the Recommendation. In particular, mention should be made of the need for increased promotion of evidence-based policy decision making through, for instance, the development of practical methodologies on how to quantify consumer detriment and to assess the impact of policy and regulatory interventions. Accordingly, it is proposed that the CCP report back to Council on the implementation of the Recommendation in five years.

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- OECD (2010), *Consumer Policy Toolkit*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264079663-en>. [1]

Notes

¹ The OECD's Newsletter is available at: www.oecd.org/sti/consumer/oecdsharpenstoolstoprotectconsumers.htm.

² http://www.ptac.gov.lv/sites/default/files/docs/1_tamefuji_24_04.pdf.

³ See: Berg, L. (2015): Consumer vulnerability: Are elderly people more vulnerable as consumers than others? *International Journal of Consumer Studies*, 39, 284-293; Berg, L. (2018): Young consumers in the digital era: The selfie effect. *International Journal of Consumer Studies*, 42, 379-388; Berg, L. (2019): Class related consumption and the ability to resist temptations in the age of commercialism. *SAGE Open*, April-June 2019 I-II

⁴ <http://sicfacilita.sic.gov.co/SICFacilita/>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299784/CMA16.pdf.

⁶

https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/index_en.htm.

⁷

http://gvh.hu/en/press_room/press_releases/press_releases_2019/the_gvh_will_assess_the_operation_of_digital_compa.html.