



Recommendation of the Council
concerning Guidelines for
Protecting Consumers from
Fraudulent and Deceptive
Commercial Practices across
Borders

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Date(s)

Adopted on 11/06/2003

Background Information

The Recommendation concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders was adopted by the OECD Council on 11 June 2003. The Recommendation seeks to provide a common framework to address the challenges of protecting consumers from cross-border fraudulent and deceptive commercial practices, and increase co-operation among consumer protection enforcement agencies regarding such practices. The Recommendation responds to the growing volume of consumer complaints about cross-border fraud and deception and recognises that these practices result in significant consumer injury and undermine the integrity of both domestic and global markets to the detriment of all businesses and consumers, and undermine consumer confidence in those markets.

THE COUNCIL,

HAVING REGARD to the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960, in particular, Article 5 b) thereof;

HAVING REGARD to the Ministerial Declaration on Consumer Protection in the Context of Electronic Commerce of 8 October 1998 [C(98)177(Annex 2)];

HAVING REGARD to the Recommendation of the Council concerning Guidelines for Consumer Protection in the Context of Electronic Commerce, adopted on 9 December 1999 [C(99)184/FINAL], which states that Member countries should, through “their judicial, regulatory, and law enforcement authorities co-operate at the international level, as appropriate, through information exchange, co-ordination, communication and joint action to combat cross-border fraudulent, misleading and unfair commercial conduct,” and which further states that “governments, businesses, consumers and their representatives should devote special attention to the development of effective cross-border redress systems”;

RECOGNISING that fraudulent and deceptive commercial practices against consumers undermine the integrity of both domestic and global markets to the detriment of all businesses and consumers, and undermine consumer confidence in those markets;

RECOGNISING that most existing laws and enforcement systems designed to address fraudulent and deceptive commercial practices against consumers were developed at a time when such practices were predominantly domestic, and that such laws and systems are therefore not always adequate to address the emerging problem of cross-border fraudulent and deceptive commercial practices;

RECOGNISING that, despite differing national systems and laws for the protection of consumers, a consensus exists on the need for a common framework to enable the further development of close co-operation among consumer protection enforcement agencies, to tackle cross-border fraudulent and deceptive commercial practices.

RECOGNISING that closer co-operation in combating fraudulent and deceptive commercial practices can lay the groundwork for enhanced international co-operation on a larger number of consumer protection issues in the future;

RECOMMENDS:

That consumer protection enforcement agencies in Member countries, having a common interest in preventing fraudulent and deceptive commercial practices against consumers, co-operate with one another in enforcing their laws against such practices;

That Member countries work to develop a framework for closer, faster, and more efficient co-operation amongst their consumer protection enforcement agencies that includes where appropriate:

- Establishing a domestic system for combating cross-border fraudulent and deceptive commercial practices against consumers;
- Enhancing notification, information sharing, and investigative assistance;
- Improving the ability to protect foreign consumers from domestic businesses engaged in fraudulent and deceptive commercial practices;
- Improving the ability to protect domestic consumers from foreign businesses engaged in fraudulent and deceptive commercial practices;
- Considering how to ensure effective redress for victimised consumers; and
- Co-operating with relevant private sector entities.

That Member countries implement this Recommendation, as set forth in greater detail in the Guidelines contained in the Annex thereto and of which it forms an integral part.

That non-member economies be invited to take account of this Recommendation, with appropriate implementation assistance from Member countries.

DECIDES that the Secretary-General shall keep a record of the consumer protection enforcement or policy agency designated as a contact point, and advise Member countries of modifications to this record.

INSTRUCTS the Committee on Consumer Policy to exchange information on progress and experiences regarding the implementation of this Recommendation, review that information, and report to the Council on this subject within three years of the adoption of this Recommendation and thereafter as appropriate.

ANNEX

GUIDELINES FOR PROTECTING CONSUMERS FROM FRAUDULENT AND DECEPTIVE COMMERCIAL PRACTICES ACROSS BORDERS

Preface

These Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders (the “Guidelines”) address fraudulent and deceptive commercial practices occurring in connection with business-to-consumer transactions. These practices result in significant consumer injury. They also undermine the integrity of both domestic and global markets to the detriment of all businesses and consumers, and undermine consumer confidence in those markets. The development of the Internet and improvements in telecommunications technologies have brought significant benefits to consumers in terms of price and choice and facilitated the globalisation of markets through cross-border transactions. They have also provided unprecedented opportunities for businesses and individuals engaged in fraudulent and deceptive commercial practices to harm consumers from different jurisdictions and to evade enforcement authorities.

Cross-border trade poses new challenges to the collective ability of consumer protection policy and enforcement agencies to protect consumers, and the growth of e-commerce in particular will make these challenges even more important. Most existing laws and enforcement systems designed to address fraudulent and deceptive commercial practices against consumers were developed at a time when such practices were predominantly domestic, and such laws and systems are therefore not always adequate to address the emerging problem of cross-border fraudulent and deceptive commercial practices that harm consumers. Moreover, Member countries have diverse consumer protection systems, involving different laws, enforcement procedures, and roles for judicial authorities, and rely to varying extents on civil, criminal, and administrative law.

Those committing cross-border fraudulent and deceptive commercial practices against consumers can quickly target large numbers of consumers and quickly cause substantial harm. They can also take advantage of limitations in the cross-border application and enforcement of consumer protection laws by such actions as establishing operations in one or more countries and harming consumers in other countries.

Many limitations on the enforcement of consumer protection laws result from having wrongdoers, victims, other witnesses, documents, and third parties involved in the transaction widely dispersed in many different places and territories. This makes it difficult for consumer protection enforcement agencies and other relevant government entities in a single Member country to gather all the information necessary to detect injurious practices, and to reach conduct occurring beyond that country’s borders. Furthermore, the location of wrongdoers can be difficult to determine. They can operate in concert from more than one territory. They can use corporate shells in various territories. They can move their operations or marketing to different territories over time. They can use facilities in a variety of territories, such as product suppliers, Internet service providers, express mail delivery services, telephone providers, domain name registries, post office boxes, web site hosting services, banks, credit card processors, call centres, data processing centres, advertising agencies, and answering services. Moreover, investigations of cross-border fraudulent and deceptive commercial practices depend on evidence that is often transient, including information from computer systems and networks. Such evidence can be lost before consumer protection enforcement agencies can examine it.

To address these challenges, there exists a consensus on the need for a common framework to develop closer, faster, and more efficient co-operation among consumer protection enforcement agencies in combating fraudulent and deceptive commercial practices. Although there exist certain international mechanisms for judicial co-operation and criminal law enforcement co-operation, these mechanisms are not always appropriate to consumer protection enforcement actions. There is thus a significant need to improve the co-operation occurring directly between consumer protection enforcement agencies.

Closer co-operation in combating fraudulent and deceptive commercial practices is an important place to start. While such co-operation does not address all misconduct that is properly the subject of

consumer protection laws in the Member countries, it can lay the groundwork for enhanced international co-operation on a broader range of consumer protection issues in the future.

I. Scope and Definitions

A. These Guidelines are intended to foster international co-operation against fraudulent and deceptive commercial practices. They reflect a commitment by the Member countries to improve their enforcement systems and laws to increase their effectiveness in combating such practices, while recognising that co-operation in particular instances will occur within the existing legal framework. The Guidelines are primarily aimed at national public bodies, as determined by each Member country, with enforcement authority for protecting consumers. They recognise that some Member countries have many competent bodies, some of which are regional or local, that can take or initiate action against fraudulent and deceptive commercial practices. The Guidelines also recognise that in some Member countries private enforcement bodies may play an important and complementary role in ensuring a high level of consumer protection, including in cross-border situations.

B. For the purposes of these Guidelines, “fraudulent and deceptive commercial practices” refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, such as:

1. A practice of making misrepresentations of material fact, including implied factual misrepresentations, that cause significant detriment to the economic interests of misled consumers;
2. A practice of failing to deliver products or provide services to consumers after the consumers have been charged;
3. A practice of charging or debiting consumers’ financial, telephone or other accounts without authorisation.

C. For the purposes of these Guidelines, “consumer protection policy agency” means any national public body, as determined by each Member country, that is specifically responsible for formulating policies to protect consumers from fraudulent, misleading, or unfair commercial practices.

D. For the purposes of these Guidelines, “consumer protection enforcement agency” means any national public body, as determined by each Member country, that has as a principal mission implementing laws against fraudulent, misleading, or unfair commercial practices affecting consumers and has powers (a) to conduct investigations or (b) to pursue enforcement proceedings, or both. Some consumer protection enforcement agencies may also be consumer protection policy agencies.

II. Domestic Frameworks for Combating Cross-border Fraudulent and Deceptive Commercial Practice

A. Member countries should introduce and maintain an effective framework of laws, consumer protection enforcement agencies, institutions, practices, and joint initiatives designed to limit the incidence of fraudulent and deceptive commercial practices against consumers. In particular, Member countries should provide for:

1. Effective measures, of a kind and at a level adequate to deter businesses and individuals from engaging in fraudulent and deceptive commercial practices;
2. Effective mechanisms to adequately investigate, preserve, obtain and share relevant information and evidence relating to occurrences of fraudulent and deceptive commercial practices;
3. Effective mechanisms to stop businesses and individuals engaged in fraudulent and deceptive commercial practices; and
4. Effective mechanisms that provide redress for consumer victims of fraudulent and deceptive commercial practices.

B. Member countries should ensure that their consumer protection enforcement agencies have the necessary authority to obtain evidence sufficient to investigate and take action in a timely manner against fraudulent and deceptive commercial practices. Such authority should include the ability to obtain necessary information and relevant documents.

C. Member countries should provide an appropriate mechanism to permit consumer protection enforcement agencies, in conjunction with judicial or administrative authorities and subject to appropriate safeguards, to seek to preserve such evidence, particularly that of a transient nature, in particular investigations until it can be examined. Such a mechanism should also be available in appropriate cases where consumer protection enforcement agencies are assisting agencies in other countries.

D. Member countries should develop mechanisms for co-operation and information sharing between and among their own consumer protection enforcement agencies and their other law enforcement authorities, for the purpose of combating fraudulent and deceptive commercial practices.

E. Member countries should review their own domestic frameworks to identify obstacles to effective cross-border co-operation in the enforcement of laws designed to protect consumers against fraudulent and deceptive commercial practices, and should consider changing domestic frameworks, including, if appropriate, adopting or amending national legislation to overcome these barriers.

F. Member countries should educate consumers about fraudulent and deceptive commercial practices, undertaking joint initiatives as appropriate.

G. Member countries should consider how, in appropriate cases, their own consumer protection enforcement agencies might use evidence, judgements, and enforceable orders obtained by a consumer protection enforcement agency in another country to improve their ability to expeditiously halt the same conduct in their own countries.

III. Principles for International Co-operation

A. Member countries should improve their ability to co-operate in combating cross-border fraudulent and deceptive commercial practices recognising that co-operation on particular investigations or cases under these Guidelines remains within the discretion of the consumer protection enforcement agency being asked to co-operate. This agency may decline to co-operate on particular investigations or proceedings, or limit or condition such co-operation, on the ground that it considers compliance with a request for co-operation to be inconsistent with its laws, interests or priorities, or resource constraints, or based on the absence of a mutual interest in the investigation or proceeding in question.

B. Consumer protection enforcement agencies should co-ordinate their investigations and enforcement activity to avoid interference with the investigations and enforcement activity of consumer protection enforcement agencies taking place in other Member countries.

C. Consumer protection enforcement agencies should make every effort to resolve disagreements as to co-operation that may arise.

D. Member countries and their consumer protection enforcement agencies should make use of existing international networks and enter into appropriate bilateral or multilateral arrangements or other initiatives to implement these Guidelines.

E. Member countries should enable their consumer protection policy agencies in consultation with consumer protection enforcement agencies to take a leading role in developing the framework for combating fraudulent and deceptive commercial practices set forth in these Guidelines.

F. Member countries should designate a consumer protection enforcement agency or a consumer protection policy agency to act as a contact point to facilitate co-operation under these Guidelines. These designations are intended to complement and not replace other means of co-operation. Such designations should be notified to the Secretary-General.

IV. Notification, Information Sharing, Assistance with Investigations, and Confidentiality

A. Member countries and their consumer protection enforcement agencies should develop ways to promptly, systematically and efficiently notify consumer protection enforcement agencies in other Member countries of investigations that affect those countries, so as to alert them of possible wrongdoing in their jurisdiction, simplify assistance and co-operation under these Guidelines and avoid duplication of efforts and potential disputes.

B. Member countries should strive to improve the abilities of consumer protection enforcement agencies to share information within timeframes that facilitate investigations of matters involving fraudulent and deceptive commercial practices against consumers, subject to appropriate safeguards as set forth in paragraph F below. Improving such abilities should be treated as a priority for detecting and fighting cross-border fraudulent and deceptive commercial practices. In particular, Member countries should work towards enabling their consumer protection enforcement agencies to share the following information with consumer protection enforcement agencies in other Member countries in appropriate instances:

1. Publicly available and other non-confidential information;
2. Consumer complaints;
3. Information about addresses, telephones, Internet domain registrations, basic corporate data, and other information permitting the quick location and identification of those engaged in fraudulent and deceptive commercial practices;
4. Expert opinions, and the underlying information on which those opinions are based; and
5. Documents, third-party information, and other evidence obtained pursuant to judicial or other compulsory process.

C. To address the speed at which those engaged in fraudulent and deceptive commercial practices can victimise large numbers of consumers, for example, through the Internet, Member countries should work together to develop fast, efficient methods for gathering and sharing information. They should build on existing projects to gather and share information, including consumer complaints and notifications of pending investigations and cases, through online tools and databases.

D. To address the dispersal of relevant evidence in multiple jurisdictions, Member countries should work toward authorising their consumer protection enforcement agencies, either directly or through appropriate mechanisms authorised by their judicial or administrative authorities, to obtain information, including documents and statements, and otherwise provide investigative assistance for foreign consumer protection enforcement agency investigations and actions, subject to appropriate safeguards.

E. To address the need to locate and identify those engaged in fraudulent and deceptive commercial practices, Member countries and their consumer protection enforcement agencies and other competent authorities should, in co-operation with one another and with domain name registrars and other relevant stakeholders, work together to develop options for reducing the incidence of false header and routing information and inaccurate information about holders of domain names.

F. Member countries should take appropriate steps to maintain the necessary confidentiality of information exchanged under these Guidelines, in particular in sharing confidential business or personal information. Member countries should, to the fullest extent possible consistent with their own laws, respect safeguards requested by other Member countries to protect confidential business or personal information shared with them.

V. Authority of Consumer Protection Enforcement Agencies

A. All consumer protection enforcement agencies whose territories are affected by fraudulent and deceptive commercial practices against consumers should have appropriate authority to investigate and take action within their own territory.

B. Member countries should work toward enabling their consumer protection enforcement agencies to take action against domestic businesses engaged in fraudulent and deceptive commercial practices against foreign consumers.

C. Member countries should work toward enabling their consumer protection enforcement agencies to take action against foreign businesses engaged in fraudulent and deceptive commercial practices against their own consumers.

D. Member countries acknowledge that the exercise of the authority described above may properly be subject to other bilateral arrangements between countries, and subject to other arrangements within a regional economic integration organisation.

VI. Consumer Redress

Member countries should jointly study the role of consumer redress in addressing the problem of fraudulent and deceptive commercial practices, devoting special attention to the development of effective cross-border redress systems. Such study should focus on:

1. The possible roles that consumer protection enforcement agencies can play in facilitating consumer redress, including the pursuit of redress on behalf of defrauded consumers, support of private claims, and advice to consumers who wish to obtain redress;
2. The effectiveness of existing cross-border consumer redress systems;
3. The feasibility of authorising consumer protection enforcement agencies to gather and share information about assets to aid a foreign consumer protection enforcement agency in appropriate cases;
4. Approaches to improving international arrangements for effecting timely freezes of business-related assets located in another country in appropriate cases;
5. Approaches to improving international arrangements for the mutual recognition and enforcement of judgements ordering redress in appropriate cases;
6. Approaches to developing additional safeguards against the abuse of payment systems and redress for consumer victims of such abuse.

VII. Private-sector Co-operation

Member countries should co-operate with businesses, industry groups, and consumer groups in furthering the goals stated in these Guidelines, and should solicit their input and support. Member countries should in particular co-operate with them on consumer education and encourage their referral of relevant complaints to consumer protection enforcement agencies. Member countries should also encourage co-operation by such third parties as financial institutions and domain name registrars in halting fraudulent and deceptive commercial practices across borders.

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