



Consumer Complaint Handling, Dispute Resolution and Redress

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EXECUTIVE SUMMARY

The right of consumers to complain about defective and/or unsafe goods and services to traders, manufacturers and service providers allows consumers to assert their rights and obtain a solution for their claims. Simultaneously consumers complaints are a valuable source of information on how markets are functioning and on the specific challenges and problems of different sectors. For consumer protection agencies, consumer complaints' handling is instrumental to facilitate consumer protection as it provides decisive information on business compliance with legal requirements which may lead to enforcement cases, being also relevant for dispute resolution and for consumer policy making. Despite the fact that not all consumers actually complain and that only a short percentage of consumers engage in dispute resolution procedures, complaints' handling enable Consumer protection agencies to identify key issues of concern through a detailed portrait of markets, to grasp the markets' functioning features and to act on the basis of this data, designing measures and initiatives to enhance consumer welfare.

Handling consumers complaints requires, careful attention and an analysis undertaken by Consumer protection agencies through a formal procedure, in order for the facts to be fully understood and for traders to be able to comment on the complaints. Complaints may lead to dispute resolution, namely through out-of-court procedures (alternative), for consumers claims to be fully considered; complaints may also lead to law enforcement against businesses and eventually to the imposition of fines and ancillary sanctions

This report provides basic information on the topic of complaints' handling, on the models available and offers some ideas for the countries of the Middle East and North Africa (MENA) region to consider when envisaging the implementation or improvement of instruments on complaints' handling. The report also provides basic tools for the MENA programme beneficiaries on this issue, supporting capacity building activities for experts, government's officials, civil society organizations and other stakeholders' representatives involved in the consumer protection policy.

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1. INTRODUCTION

This report focuses on the existing consumer protection complaints' handling procedures and related dispute resolution tools that Consumer protection agencies and other public authorities may use when dealing with consumer complaints.

In order to achieve a complete understanding of the meaning, objective, methods and benefits of complaints handling, this report places the issue at stake in the context of the development of the Consumer protection policy and of the Consumer protection movement (background). Secondly it refers to the objectives of this report and the importance of addressing this issue. It then moves to the existing consumer protection systems and models in relation to the different methods of complaints' handling. Once the different consumer protection systems have been presented, complaints' handling are directly dealt with the background of complaints; types of complaints' handling procedures; models of complaints' handling - administrative procedures and privately managed systems by consumer associations and business. Mechanisms for access to justice, including alternative dispute resolution, are also addressed. The report also refers to existing models and examples of consumer protection complaints' handling in different countries and regions. The last part of the report offers concluding remarks and some recommendations, indicating research materials (academic and experts' references facilitating access to additional information) and models.

2. BACKGROUND

Historically, consumers' rights were first addressed and demanded by civil society. The consumer protection movement is a result of a series of economic developments – the development of capitalism – as the common economic system – based on private property, capital accumulation, wage labor, voluntary exchange, price system, and the distribution of goods and services determined by market competition.

Market freedom thus demanded the protection of consumers, whose rights were mainly established due to the recognition of their disadvantaged position vis-à-vis traders stemming from the asymmetry of information that is present in all consumption decisions.

The first consumer protection non-governmental organization (NGO) was founded in the United States of America in 1936¹: Consumer Reports, “formed as an independent, non-profit

¹ <http://consumersunion.org/about/mission/>(accessed on May 18, 2017)

organization (...) serves consumers through unbiased product testing and ratings, research, journalism, public education, and advocacy (...)"

Currently, one of the most respected consumer protection NGO's representatives is the London based Consumers International, first founded in 1960 with the mission to "(...) champion Consumer Rights internationally in order to help protect and empower consumers everywhere (...)"

The historical reference to the recognition of consumers' rights and the landmark outline of what would be in fact consumer protection, is owed to the former United States of America President John Kennedy who, on his March 15th, 1962, speech to the American Congress, affirmed³:

"Consumers by definition, include us all,

They are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group... whose views are often not heard. Nearly all of the programs offered by this Administration - e.g., the expansion of world trade, the improvement of medical care, the reduction of passenger taxes, the strengthening of mass transit, the development of conservation and recreation areas and low-cost power - are of direct or inherent importance to consumers.

Additional legislative and administrative action is required, however, if the federal Government is to meet its responsibility to consumers in the exercise of their rights.

These rights include:

- (1) The right to safety [...]
- (2) The right to be informed--to be protected [information, advertising, labelling]
- (3) The right to choose--to be assured, wherever possible, access to a variety of products and services at competitive prices [...];
- (4) The right to be heard [consideration of consumer interests in the formulation of Government policy] and fair and expeditious treatment in its administrative tribunals.

To promote the fuller realization of these consumer rights, it is necessary that existing Government programs be strengthened, that Government organization be improved, and, in certain areas, that new legislation be enacted."

Following official recognition of consumer's rights, many countries began drafting their consumer protection laws and policies, since previously only some related issues had been addressed by commercial and contract laws.⁴

² <http://www.consumersinternational.org/who-we-are/about-us/> (accessed on May 18, 2017)

³ <https://www.jfklibrary.org/Asset-Viewer/Archives/JFKPOF-037-028.aspx> (accessed on May, 18 2017).

⁴ For additional information, see UNCTAD Manual on Consumer Protection, 2017 (UNCTAD/DITC/CPLP/2017/1), Part one, III -C, pages 18-23.

In Europe the first efforts developed on this issue at regional level were led by the Council of Europe⁵, whose mandate comprises human rights, democracy and rule of law. In 1973, its Consultative Assembly adopted a Consumer Protection Charter⁶, encompassing the rights of consumers to protection and assistance, to redress against damage, to consumer information, to consumer education and to representation and consultation. This text and the discussions that followed would influence

A. The United Nations

Upon the advent of the United Nations Guidelines for Consumer Protection, first adopted on April 1985, by the United Nations General Assembly⁷, consumer protection gained strength internationally based on the framework provided for the development of legislation and policies to protect and defend consumers' rights.

The United Nations Guidelines for Consumer Protection (UNGCP) are a clear recognition of the importance of the key consumer legitimate needs such as the right to safety, the right to be informed, the right to choose and the right to be heard. Across the world, ample efforts are being carried out to fully implement the UNGCP and ensure consumers' basic rights such as the right to be informed and the right to safety. In times of e-commerce and of a broad and expanded access to products and services worldwide, such concerns have become even more significant.

Due to the official recognition of consumers' rights, Governments imposed obligations on manufacturers and traders so that these rights would be fully complied with. Those legal requirements were accompanied by specific enforcement rules and procedures, seeking to ensure consumer protection in the markets. Market surveillance and monitoring are extremely important to protect consumers, to reduce inequalities and to improve people's lives. But the requirements of information on the composition and characteristics of products, of clear, fair and balanced contracts' terms and conditions, of high standards of product safety also contribute to better products and services, increasing businesses' performance and boosting their competitiveness.

B. The OECD

⁵ <https://www.coe.int/en/web/portal>.

⁶ Resolution 543 (1973) on a Consumer Protection Charter, adopted on 17 May 1973, following the Recommendation 624 (1971) on the legal protection of consumers.

⁷ Resolution 39/248 of 16 April 1985.

The Committee on Consumer Policy (CCP) was established at the Organisation for Economic Co-operation and Development (OECD)⁸ in 1969 gathering senior consumer protection experts and officials from member States and invited experts from non-members as well as representatives of the civil society. The OECD Committee on Consumer Policy (CCP) aims to develop and strengthen markets by ensuring consumer protection from misleading practices as well as unsafe products. The CCP carries out studies and analysis providing the exchange of information among members, publishing guidelines on policies, researches and recommendations that have become reference to both developed and developing countries on leading issues such as consumer protection in e-commerce (1999, revised in 2016), consumer protection in dispute resolution and redress (2007), consumer education (2009), consumer policy decision making (2014). The Consumer Policy Toolkit, (2010) is a valuable tool for policymaking, being the reference of the recommendation on consumer policymaking.

C. The European Union

The Treaty of Rome (1957), which established the Common Market and the framework of the European economic integration, didn't refer to consumer protection nor envisaged citizens' rights due to the focus on market-related issues. The Preliminary Program of the European Economic Community for the Policy of Protection and Information of Consumers, approved by a Council Resolution in April 1975⁹, turned to this issue for the first time, defining consumers and identifying five fundamental rights of the European consumers which remain relevant until today.

Only in 1986 the Single European Act¹⁰, which did the first revision of the Treaties of Rome setting up the European Economic Community and the [European Atomic Energy Community](#), would recognize consumer protection as an objective of the Single Market¹¹, the goal set for 1992 that implied the deepening and enlarging of the Common Market. This was followed and developed by the Treaty on European Union (1992), which included consumer protection in the European Community's actions (article 3 -s) and comprised a new specific provision dedicated to consumer protection (Title XI, article 129-A).

The most relevant developments were brought by the Treaty of Lisbon (2007) and by the EU Charter of Fundamental Rights¹²: the Charter, whose provisions have the same legal value as

⁸ <http://www.oecd.org/sti/consumer/workofthecommitteeonconsumerpolicy.htm> (accessed on 12 September 2018).

⁹ Published in the Official Journal (OJ) C92/1, 24.4.1975.

¹⁰ Published in the OJ L 169, 29.6.1987.

¹¹ Article 100-A.

¹² Published in the OJ /C 202, 7.6.2016.

the Treaties (article 6, number 1 of the Treaty on European Union), states that the Union shall ensure a high level of consumer protection (article 38), placing it at the higher possible level. The Treaty on the Functioning of the European Union¹³ (TFEU) states that "Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities" (article 12), underlining the horizontal role of this topic. Furthermore, it clarifies that consumer protection is subject of shared competences of the EU and member States (article 4, number 2, f), and revised article 169, the only specific provision on consumer protection, which refers to the European consumer rights (protection of health, safety and economic interests of consumers, right to information, education and organization to safeguard their interests), now associating the European Parliament to the legislative process.¹⁴.

The current European consumer policy strategy is established by the European Consumer Agenda¹⁵, which set 4 main objectives for the period 2014-2020: I) improving consumer safety; enhancing knowledge; stepping up law enforcement and securing redress as well aligning rights and key policies to economic and societal challenges.

With this concern, the European Union has been actively adopting legislation and initiatives regarding the digital economy (e-commerce; geo-blocking; online platforms¹⁶), seeking to achieve a sound evidence-based policy¹⁷ and to ensure effective dispute resolution and redress¹⁸.

¹³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

¹⁴ For additional information, see Teresa Moreira on article 169 of the TFEU in "Treaty of Lisbon - article-by-article commentary on the European Union Treaties," , edited by Manuel Lopes Porto and Goncalo Anastacio, Almedina, Coimbra, 2018.

¹⁵ "A European consumer agenda - Boosting confidence and growth", .Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. (COM (2012) 225 final, 22 May 2012).

¹⁶ <https://ec.europa.eu/digital-single-market/en/policies/shaping-digital-single-market> (accessed in August 2019).

¹⁷ https://ec.europa.eu/info/policies/consumers/consumer-protection_en (accessed in August 2019).

¹⁸ https://ec.europa.eu/info/live-work-travel-eu/consumers/resolve-your-consumer-complaint_en (accessed in August 2019).

3. CONSUMER COMPLAINTS HANDLING

One of the most important consumer rights, is the right to information. This supposes that traders are to provide consumers with the necessary information for them to choose products adjusted to their needs. Informed consumers are capable of making rational and informed decisions. Informed consumers are empowered to play an active role in the market, although the right to information requires consumers to seek information, underlining consumers' individual responsibility in this matter. Consumer information and empowerment often require continuous advocacy efforts through awareness-raising actions and education initiatives to draw consumers attention to their rights and duties.

Empowered consumers, who know their rights are subject to fewer abuses. This directly improves their welfare and the economy as well. It also contributes to creating a level playing field for businesses, which must apply a common set of standards, also positively impacting on competition.

Since the beginning of the development of the consumer movement consumers' right to information, access to information has been at the heart of consumer protection.

The United Nations Guidelines for Consumer Protection include several references to the importance of consumer information in its General principles (part III) as in the recommendations for National policies for consumer protection (part V – Guidelines, point A, guideline 14), as below:

<p>III. General principles</p> <p>(...)</p> <p>5. The legitimate needs which the guidelines are intended to meet are the following: (e) Access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs;</p>
<p>V. Guidelines</p> <p>National policies for consumer protection</p> <p>(...)</p> <p>14. Member States should establish consumer protection policies that encourage:</p>

- (b) Clear and timely information to enable consumers to contact businesses easily, and to enable regulatory and law enforcement authorities to identify and locate them. This may include information such as the identity of the business, its legal name and the name under which it trades, its principal geographic address, website and e-mail address or other means of contact, its telephone number and its government registration or license numbers;
- (c) Clear and timely information regarding the goods or services offered by businesses and the terms and conditions of the relevant transaction;
- (d) Clear, concise and easy to understand contract terms that are not unfair;

In the new chapter on Principles for Good Business Practices (IV), added by the 2015 revision, other relevant recommendations were introduced.

IV. Principles for good business practices

(...)

(c) Disclosure and transparency. Businesses should provide complete, accurate and not misleading information regarding the goods and services, terms, conditions, applicable fees and final costs to enable consumers to take informed decisions. Businesses should ensure easy access to this information, especially to the key terms and conditions, regardless of the means of technology used;

Once consumers are provided basic information on the product or service; on the trader; on the conditions of the purchase; on contacts and channels available for contact, not only their very basic right is respected, but also the probability of disputes diminishes.

Consumer access to information is not only a basic consumer right but also has a positive impact providing transparency and confidence in the marketplace.

A. Background

Closely related with the right to information is the right of consumers to react against breaches to their rights as contained in consumer protection laws. Such breaches may consist in defective products, products that are costlier than advertised, or products that are delivered

late. The right to complain allows consumers to assert their rights, to resolve disputes and to seek redress.

Consumers usually contact directly the trader when a product is defective or Underperforming, since they have a direct contractual relationship with the consumer and are the closest contact for this purpose.¹⁹ and it is rightly so, as the trader is the best placed to react to the question or complaint and to replace, repair or reimburse the product at stake. This means that businesses, which are especially well placed to address consumers' problems effectively, need to be equipped to do so, as recommended by the UNGCP in guideline 14, f): "Consumer complaints and disputes. Businesses should make available complaints-handling mechanisms that provide consumers with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden. Businesses should consider subscribing to domestic and international standards pertaining to internal complaints handling, alternative dispute resolution services and customer satisfaction codes."

With this goal in mind, in 2004 the International Standard Organization (ISO) developed a standard on "Quality Management – Customer Satisfaction – Guidelines for complaints handling in organizations"²⁰, which establishes principles such as visibility, accessibility, responsiveness, objectivity, freedom from charge to customers, confidentiality, a customer-focused approach, accountability and continual improvement, providing guidelines for the process of complaints handling related to products and services within an organization, including planning, design, development, operation, maintenance and improvement. And business across the world have set up units and channels to reply to consumers queries and complaints, trying to resolve problems being reported and improve customer service.²¹

However, consumers often encounter difficulties when reaching out to traders, especially in the online world. These difficulties motivate consumers to turn to consumer protection agencies and sectoral regulators to complain and seek advice from.

Consumer protection agencies will receive complaints through different means of communication, will analyze and reply to them, after hearing the traders' versions of the facts

¹⁹ For instance, this is assumed by the UK Citizen Advice service on consumer complaints, available at <https://www.citizensadvice.org.uk/consumer/get-more-help/Solve-an-ongoing-consumer-problem/>: "There are steps you can take if you've approached a business seller about a problem with a product or service and you're not getting anywhere." See also Christopher Hodges, Iris Benohr and Naomi Creutzfeldt-Banda in "Consumer ADR in Europe" (2012), stating that "There is widespread agreement that the first tier in resolving issues between consumers and traders is for them to communicate directly...The expectation is that direct contact will resolve the vast majority of problems, many of which will, at that stage, be queries rather than disputes", page 339 on.

¹⁹ ISO 10002:2018, available at <https://www.iso.org/standards.html>.

²⁰ ISO 10002:2018, available at <https://www.iso.org/standards.html>.

²¹ In any case, trader's customer services do not provide assistance to consumers similarly to consumer agencies or the consumer associations since they are not independent nor impartial.

and allowing them to explain and comment on the complaints' content. When disputes have been established, they are referred to alternative dispute resolution mechanisms, if available, or to the judicial system. If a possible breach of law is identified, the complaint may lead to law enforcement proceedings against the trader.

Therefore, consumer protection agencies handle consumer complaints but don't usually resolve disputes, for which out-of-court or alternative dispute resolution mechanisms are the appropriate means, acting in a quick, simple and effective way, or judicial courts, since redress through damages may be exclusively be granted by them.

This is to say that complaints often lead to disputes that need the intervention of third parties independent and qualified to mediate and/to settle them out-of-court or may be discussed in judicial courts. Consumer complaints are therefore closely linked to dispute resolution and redress.

Consumer protection agencies and consumer associations are not usually entrusted with the powers to conduct formal consumer dispute resolution. Alternative dispute resolution is nowadays subject to several formal requirements monitored by public bodies, including consumer protection agencies, and it doesn't prevent going to a judicial court to get damages to compensate consumers.

But consumer complaints are extremely relevant for consumer protection agencies for other reasons: they provide useful information on markets' functioning, allowing consumer agencies to identify challenges that may be addressed through legislation and/or information and education campaigns or may justify sector-specific market surveillance actions and law enforcement initiatives.²²

For regional economic organizations such as the European Union, whose goal is to achieve a fully functioning single market and increase consumer trust, the information gathered by consumer complaints at the level of its member States and complemented by surveys of consumer perceptions experiences and by consumers and retailers' attitudes²³, has been crucial in providing evidence on how markets perform for consumers to inform policy. It is not

²² As recognized by the OECD Recommendation on Consumer Dispute Resolution and Redress (2007), part V. "Mechanisms for collecting consumer complaints and analysing marketplace trends, <https://www.oecd.org/sti/ieconomy/oecdrecommendationonconsumerdisputeresolutionandredress.htm>. See also the OECD Report "Enhancing Consumer policy making: the role of Consumer Complaints" (DSTI/CP(2011)22/FINAL), 31 August-2012, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP\(2011\)22/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(2011)22/FINAL&docLanguage=En).

²³ See Consumer Market Scoreboards as of 2008 in https://ec.europa.eu/info/policies/consumers/consumer-protection/evidence-based-consumer-policy/consumer-scoreboards_en.

limited to complaints reported by national authorities as it monitors consumers knowledge and trust and traders' compliance and enforcement. This also allows the European Commission to identify cross-border trade difficulties.

In order to facilitate a consistent understanding of consumer complaints in the EU and to support the Consumer Market Scoreboards, in 12 May 2010 a European Commission recommendation on the use of an harmonized methodology for classifying and reporting consumer complaints and enquiries was adopted²⁴: it provided a sound basis for the comparison and detailed analysis of complaints registered by different national levels within the EU but its implementation faced challenges, as the member States are demographically different and tend to have different consumer protection, which impact in the data provided. Along the same lines, the OECD Consumer Policy Toolkit (2010)²⁵ highlights how consumer complaints provide signs to Identify consumer detriment (« ...a loss in economic welfare if [consumers] are misled into making purchases of goods and services which they would not otherwise have made or if they pay more for purchases than they would if they had been better informed». Despite referring to consumer complaints as the «gold standard of indicators», the Toolkit recognizes that complaints need to be interpreted in conjunction with other indicators as the different traditions in consumer protection, among other factors, will influence the outcome. It does share nine examples of consumer complaints initiatives (Table 3.2.), underlining that consumer surveys and independent research need to be developed to offer other indicators that combined provide a more accurate picture of the markets.

Consumer associations (NGOs) collectively represent consumers and their strength towards business comes from their representativeness: for this reason, due to their leverage, they also receive and reply to consumer complaints, advising consumers on how to proceed. They may facilitate consumers dispute resolution, although they don't necessarily qualify as alternative dispute resolution mechanisms. Furthermore, they are not granted law enforcement powers, exclusive of Consumer protection agencies and sector-specific regulators which are entrusted a mandate based on public interest.

Therefore, different roles are played by traders, Consumer protection agencies and other public bodies, and consumer organizations, out-of-court mechanisms and the judicial system when dealing with consumers complaints and consumer dispute resolution and redress. Hence, they have different types of intervention and aren't all able to resolve disputes nor to provide consumer relief.

²⁴ Published in the OJ L 136, 2.6.2010.

²⁵ Quoted, note 39, Chapter 3 -"Identifying and Analysing Consumer Market Problems", pages 51-69

B. PROCEDURES

Consumers seek business that respect their rights; seek products that attend their needs; and considering the development of the digital economy consumers seek fast and expeditious: procedures, information, responses, deliveries. When consumers experience a contract breach, they first seek information, - and simply expect the solution or information to be delivered in a fast, expeditious and practical manner.

Following the development of digital tools, consumers tend to seek the ones available online. Consumers are often not aware of the differences of engaging in a complaint procedure that is overseen by a consumer protection agency and one that is conducted by a consumer association. That is why it is crucial for consumer protection agencies as well as the consumers associations to engage in awareness campaigns clarifying consumer rights and the goals and features of out-of-court mechanisms.

Due to the development of technologies and a variety of accesses to products and services: offline, online, via mobile phones, applications (apps), social media, international providers, etc. and the natural growth of consumer disputes, public authorities as well as businesses have been not only engaging in new forms of dispute resolution and redress, but also improving access to existing ones.

The following text refers to existing public complaints' mechanisms of administrative nature managed and coordinated by consumer agencies or other public authorities in charge of consumer related matters.

Administrative Procedures

For consumers, complaining gives a chance to be heard and to get faulty products repaired, replaced or reimbursed.

Consumer complaints may be filed by consumers before the consumer protection local, regional or national authorities or before sectoral regulators and other public bodies: complaints are then handled through administrative procedures, as observed in most of the MENA countries.

It is of utmost importance that consumers know how to complain through simple and easy information made publicly available: complaints should be free of charge and consumers should be informed of their complaint's outcome.

Although complaints may be received through different channels of communication - mail, online, phone, directly face-to-face -, often there will be template forms to gather the relevant information on the subject of the complaint, the trader's identification, the reason for the complaint and to allow the agency to analyze it.

Consumer agencies and other public bodies will hear the traders' version of the facts, confronting them with the complaints received. The intervention of a public body may persuade traders to reach a positive solution, even though no formal mediation takes place. In case of a positive solution the procedure will be closed.

Since consumers often complain to several public bodies, it is important to ensure that there are communication and coordination between them regarding the complaints received in order to avoid parallel procedures and duplication of efforts and to promote consistent handling. This is particularly important in decentralized consumer protection systems: either the national consumer authority coordinates all complaints, being present regionally or locally – such as in the case of Uruguay²⁶; or consumer agencies at national and local levels are autonomous, the national authority only coordinating the overall consumer policy, while local authorities are responsible for handling consumer complaints – such as in the case of Brazil^{27,28}. In case there is no dedicated consumer protection agency consumer complaints may be handled by other public bodies (food and safety agencies and sectoral regulators): however, this will lead to diverse outcomes and will pave the way for inconsistency as sector-specific views may strongly differ.

An interesting example is provided by the Portuguese “Livro de Reclamações”²⁹ or “complaints book”. According to Decree-Law No. 156/2005 all traders are obliged to make available to consumers a complaints book at every commercial premises³⁰. The book allows consumers to write down their complaints in site, which will be sent to the competent public body (the food and economic safety authority, sectoral regulators, the Consumer Directorate-General) for handling. Twice a year, overall data regarding complaints registered in the Complaints book is analyzed and made public by the Consumer Directorate-General of Portugal, which coordinates this instrument. It illustrates economic sectors where consumers face challenges and how markets are functioning, providing relevant information for follow-up enforcement action and policy purposes.

²⁶ <http://consumidor.mef.gub.uy/> (accessed on September 24, 2018).

²⁷ http://www.justica.gov.br/Acesso/auditorias/subpaginas_auditoria/senacon (accessed on September 24, 2018)

²⁸ <http://www.procon.sp.gov.br/> (accessed on September 24, 2018)

²⁹ <https://www.consumidor.gov.pt/livro-de-reclamacoes.aspx> (accessed on November 5, 2018).

³⁰ The trader must have the complaints book and make it available on demand and must keep and display not only the information contained in a complaints book, but also send complaints received to the competent authority to assess and register the complaint.

The complaints book allows consumers to complain immediately about products and services, providing information also to traders about consumers perceptions and experiences.

Since July 2018, the complaints' book has been available also online³¹ through electronic means, involving sectoral regulators and public bodies and again being coordinated by the the Consumer Directorate-General. Businesses are now obliged to have both versions of the Complaints Book: in their physical premises and online³².

Another interesting experience at European level is provided by the European Consumer Centres network, which gathers 30 national consumer centres in the 28 EU member States, plus in Iceland and Norway, and that created in partnership with national consumer agencies (in most cases) or other relevant stakeholders and is supported by the European Commission to focus on cross-border trade, informing and assisting consumers to settle disputes through close cooperation.³³ The EEC-Net refers consumers to ADR mechanisms in case of need, illustrating how cooperation is crucial for improved consumer protection regarding cross-border trade in a large single market such as the European Union one.

Law enforcement proceedings

Complaints received by consumer agencies and sectoral regulators may identify the breach of traders' obligations, which then should lead to enforcement proceedings. If law infringements are found, they will be formally ordered to be ended and may be subject to behavioral conditions, such as the withdrawal of a product from the market, the deletion and replacement of unfair contract clauses or of a misleading advertisement. They are also usually subject to the imposition of sanctions of monetary nature (fines and periodic penalty payments).

However, legal proceedings against traders do not provide for the compensation of consumers damages, complainants hardly ever having a role in this framework as legal infringements must be pursued by public authorities regardless of the source of information and consumer agencies as sectoral regulators regularly conduct market surveillance actions and enquiries to identify possible breaches of legislation.

³¹ <https://www.livroreclamacoes.pt/inicio> (accessed on November 9, 2018).

³² <http://data.dre.pt/eli/dec-lei/74/2017/06/21/p/dre/pt/html> (accessed on November 9, 2018).

³³ https://ec.europa.eu/info/live-work-travel-eu/consumers/resolve-your-consumer-complaint/european-consumer-centres-network_en (accessed in August 2019).

It is nevertheless important to note that legal proceedings against business do not seek to provide consumers relief. And that for consumers to get damages, they will need to launch judicial proceedings.

Consumer complaints may also be handled by consumer associations and by businesses, which should follow best practices as recommended by the United Nations Guidelines for Consumer Protection.

Consumer Associations

Consumer associations may also receive and handle consumer complaints. However, consumer associations don't have enforcement powers as consumer agencies, despite having a privileged position to gather and interpret consumer complaints for they are closer to consumers' reality.

As mentioned before, consumer associations often engage in consumer class actions once collective interests are at stake. In fact, consumer associations often have the mandate to represent consumers interests before Government institutions, courts, businesses, therefore taking part in policy and legal discussions on behalf of consumers³⁴.

Consumer associations receive and reply to consumer complaints, being well placed to dialogue with traders and request them to respect consumer rights. Their leverage vis-à-vis traders derives from their representativeness and from their power to challenge business reputation through their communication channels, even though they may not be able to provide alternative dispute resolution mechanisms.

Consumer associations and other NGO's legal standing to bring collective actions as consumers' representative is a crucial mechanism to obtain redress and compensatory damages for consumers, especially vulnerable and disadvantaged groups, which may otherwise be difficult to reach or even left out.

As mentioned earlier, the UNGCP encourage member States to cooperate with both businesses and consumer associations in order to develop and improve mechanisms so that consumers are provided properly access to information and to file complaints. (Section F, guideline 41).

Business Complaints Handling

³⁴ UNCTAD Manual on Consumer Protection UNCTAD/WEB/DITC/2016/1

Complaints' handling by businesses can have a positive influence on the commercial relationships and customer satisfaction³⁵ and also provide business an opportunity to review products and services³⁶ in order to improve them.

In the new chapter on Good business practices of the UNGCP³⁷, as referred earlier, for the first time businesses are encouraged to “make available complaints-handling mechanisms that provide consumers with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden (...)”, although these do not substitute complaints handling coordinated by consumer protection authorities. But since traders tend to be the first contact for consumers to solve a dispute, it is important that such mechanisms are made available and are used to solve consumer complaints.

Businesses can also cooperate among themselves to improve consumer complaints handling procedures, namely at sector level through business organizations. The markets monitoring conducted by public bodies and the disclosure of consumer complaints rankings are important tool to promote business consumer relations improvements.

The UN Guidelines for Consumer Protection rightly underline the need for business engagement to improve consumer protection, through self and co-regulation initiatives and in close cooperation with public authorities.

Within the OECD, the 2011 (revised) Guidelines for Multinational Enterprises (MNEs)³⁸ provide several recommendations to businesses including on environment, competition and taxation and consumer interests – to name a few. The MNEs guidelines³⁹ also foresee a mechanism for complaints regarding any non-compliance related to them.

When businesses provide consumers accessible channels to complain, they encounter several benefits: consumers have access to information, complaints decrease before authorities and the judiciary, valuable information is gathered by traders to improve products, services and consumer communication channels, not to mention a better business image and reputation.

The advent of the digital economy and the speed of information sharing have been forcing businesses to rethink and react before the negative impact of consumers' opinions; therefore,

³⁵ OECD Consumer Policy Toolkit, 2010, quoted.

³⁶ [http://www.customerexpressions.com/CEX/cexweb.nsf/\(GetPages\)/c098e3e1b60af5ba85256ff2006a40ec](http://www.customerexpressions.com/CEX/cexweb.nsf/(GetPages)/c098e3e1b60af5ba85256ff2006a40ec) (accessed on 22 May 2017)

³⁷ http://unctad.org/meetings/en/SessionalDocuments/ares70d186_en.pdf (accessed on May 28, 2017)

³⁸ <http://www.oecd.org/corporate/mne/> (accessed on November 10, 2018).

³⁹ <http://www.oecd.org/investment/mne/1922428.pdf> (accessed on November 10, 2018).

new approaches to consumers information and internal complaints' channels, preventing disputes and avoiding public exposure are needed.

4. DISPUTE RESOLUTION AND REDRESS

The revised UNGCP (2015) contain a new section on "Dispute resolution and redress" (V. Guidelines, Section F, guidelines 37-41) which recommend best practices to member States, consumer organizations and businesses on different means, highlighting their main features regardless of the nature and of the management of such mechanisms, in light of consumer interests.

37. Member States should encourage the development of fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases. Member States should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, transparent, inexpensive and accessible. Such procedures should take particular account of the needs of vulnerable and disadvantaged consumers. Member States should provide consumers with access to remedies that do not impose a cost, delay or undue burden on the economic value at stake and at the same time do not impose excessive or undue burdens on society and businesses.

38. Member States should encourage all businesses to resolve consumer disputes in an expeditious, fair, transparent, inexpensive, accessible and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.

39. Information on available redress and other dispute-resolving procedures should be made available to consumers. Access to dispute resolution and redress mechanisms, including alternative dispute resolution, should be enhanced, particularly in cross-border disputes.

40. Member States should ensure that collective resolution procedures are expeditious, transparent, fair, inexpensive and accessible to both consumers and businesses, including those pertaining to over indebtedness and bankruptcy cases.

41. Member States should cooperate with businesses and consumer groups in furthering consumer and business understanding of how to avoid disputes, of dispute resolution and redress mechanisms available to consumers and of where consumers can file complaints.

They are the most recent and important reference on this topic, being inspired by the 2007 OECD Recommendation on Consumer Dispute Resolution and Redress should also be considered.

A. Alternative Dispute Resolution mechanisms

Alternative dispute resolution (ADR) means settling consumer complaints out of court with the assistance of an impartial dispute resolution body⁴⁰. Because consumer claims tend to have low monetary value, it is often not worthwhile for consumers to launch a judicial case to solve a dispute but rather to use an easy, fast and inexpensive or even free of charge mechanism.

ADR includes mediation, conciliation and arbitration. In all cases there is the intervention of a neutral third party qualified to facilitate dialogue and the resolution of the dispute through the agreement between the parties in the first two cases, while arbitration is more similar to a court proceeding, encompassing an hearing and leading to a decision that may be binding.⁴¹

ADR procedures are usually voluntary, but they may be mandatory by legislation⁴².

Consumer agencies and sectoral regulators will refer consumer complaints to appropriate ADR mechanisms when no positive solution was achieved at the administrative stage, but consumers may also lodge complaints directly with ADR mechanisms.

In order to provide a stable and transparent framework for ADR in Europe, the European Commission adopted two recommendations in 1998⁴³ and 2001⁴⁴ establishing minimum principles governing the creation and operation of out-of-court procedures for resolving consumer disputes (independence; transparency; adversarial principle; effectiveness; legality; liberty; representation, later resumed to impartiality; transparency; effectiveness and

⁴⁰ Alternative dispute resolution for consumers in the European Union, https://ec.europa.eu/info/live-work-travel-eu/consumers/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en (accessed in August 2019). For further detailed information, see UNCTAD secretariat note on "Dispute resolution and redress" (TD/B/C.I/CPLP/11, 30 April 2018), available at https://unctad.org/meetings/en/SessionalDocuments/cicplpd11_en.pdf.

⁴¹ See also ICPEN - International Consumer Protection Enforcement Network <https://www.econsumer.gov/AlternativeDisputeResolution#crnt>.

⁴² See the Portuguese legal framework regarding "public essential services", comprising water supply and waste management services; electricity and gas supply services; electronic communications; postal services, defined by Law No. 23/96, 26 July, lastly revised by Law No. 10/2013, of January 28. According to article 15, consumers may trigger necessary arbitration in disputes related to these services.

⁴³ Commission Recommendation of 30 March 1998 (98/257/EC) on the principles applicable to bodies responsible for out-of-court settlement on consumer disputes.

⁴⁴ Commission Recommendation of 4 April 2001 (2001/310/EC) on the principles for bodies responsible for out-of-court bodies involved in the consensual resolution of consumer disputes.

fairness)⁴⁵. In 2013, Directive 2013/11/EU⁴⁶, the European Directive on consumer ADR, modernized and reorganized the requirements applicable for harmonization purposes, referring to the principles of expertise (of natural persons in charge of the ADR in the field of alternative or judicial resolution of consumer disputes, and general understanding of law) independence and impartiality (sufficient term duration; not subject to instructions from the parties; remuneration not linked to outcome of the procedure); transparency (publicly available information on the expertise of the ADR persons in charge; types of disputes; procedural rules and type of rules applicable; preliminary requirements; applicable costs if any; average length of procedures; legal effect of outcomes and enforceability of ADR decisions; annual reports should also provide detailed information on cases handled), effectiveness (procedures available online and offline; no need to retain a lawyer or a legal advisor; procedures free of charge or nominal fee for consumer; outcome in 90 days deadline) fairness (adversarial procedure; possibility of withdrawal; available choice of solutions' options and respective consequences, namely on the decision's legal effect), liberty (consumers cannot be bound by traders regarding the use of ADR; binding solutions depend on the previous information and acceptance by the consumer) and legality (in conflict of laws situations consumers cannot be deprived of legal protection): it also established that member States should appoint competent authorities to oversee which mechanisms comply with the requirements and qualify as ADR entities within the EU.

The OECD Recommendation on Consumer Dispute Resolution and Redress (2007)⁴⁷ is of similar relevance, gathering common principles and recommendations both for individual and collective consumer claims, cross-border consumer disputes and private sector cooperation. The principles mentioned⁴⁸ as well as the consumer ADR mechanisms' monitoring from public authorities foreseen by the EU legislation increase trust from consumers and business in these systems, contributing for enhanced consumer protection.

ADR is also becoming popular in the context of the digital economy, leading to the development of online dispute resolution. There are examples of ADR tools related to online

⁴⁵ For additional and detailed information on ADR in Europe, see "Consumer ADR in Europe - Civil Justice Systems" by Christopher Hodges, Iris Benohr and Naomi Creutzfeldt-Banda, 2012, Hart Publishing, Oxford and Portland, Oregon.

⁴⁶ Directive of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

⁴⁷ Quoted, note 43. A 2014 report on the "Implementation of the OECD Recommendation on Consumer Dispute Resolution and Redress"(March 2014) examined how the recommendation had been implemented, which suggests the need for an "ex-post" regular assessment of the ADR mechanisms' structure and functioning.

⁴⁸ Also addressed in the UNCTAD Manual on Consumer Protection (2017), quoted, Part two- "Consumer protection in the marketplace", Chapter XI. "Consumer dispute resolution and redress", pages 83-89.

trade in the European Union - online dispute resolution (ODR)⁴⁹ tool - and in Latin America - the Brazilian Consumidor.gov⁵⁰ and the Mexican Concilianet⁵¹, although it may still be early to assess their performance.

the EU Online Dispute Resolution platform is a web-based platform developed by the European Commission to help consumers and traders resolve their contractual disputes about online purchases of goods and services out-of-court at a low cost in a simple and fast way. It allows consumers to submit their disputes online in any of the 23 official languages of the European Union. The ODR platform transmits the disputes only to the quality dispute resolution bodies communicated by member States, which had to appoint a national contact point to aid users of the platform that is operating since February 2016.

According to the Regulation on consumer ODR⁵², all businesses established in the EU selling goods or providing services to consumers online need to comply with the ADR/ODR legislation. They are obliged to use ADR mechanisms and inform consumers of the dispute resolution body/bodies by which they are covered.

In any case, it is necessary to inform consumers of the possibility of using alternative dispute resolution mechanisms to resolve disputes and of available mechanisms, so that consumers feel compelled to take a stand for their rights to be fully enforced.

B. Redress

Whatever the outcome of complaints' handling and of alternative dispute resolution, consumers may still want to pursue their claims in courts, especially, to obtain damages for harm endured consumers may launch judicial action before courts.

All citizens are entitled to access to justice to get their rights recognized and uphold, which applies to consumer rights: however, the costs associated with going to court - judicial and lawyers' fees; complexity of rules and regulations; length of cases - compared to the usual low value of the consumer disputes discourage most consumers of exploring the judicial way.

Hence, the two most common legal avenues for consumers are small claims cases and collective redress.⁵³ Small claims cases are usually limited according to theme and value and subject to a simplified procedure, depending on the local (national) legislation. They are

⁴⁹ The European Online Dispute Resolution (ODR) platform is provided by the European Commission to make online shopping safer and fairer through access to quality dispute resolution: for further information see <https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2.show&lng=EN> (accessed on 18 September 2018)

⁵⁰ <https://www.consumidor.gov.br/pages/conteudo/sobre-servico> (accessed on 18 September 2018)

⁵¹ <https://concilianet.profeco.gob.mx/Concilianet/> (accessed on 18 September 2018).

⁵² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0524&from=EN>

⁵³ Manual on Consumer Protection, UNCTAD, 2017, quoted.

regulated by specific legislation, such as in the European Union since 2009, where the maximum value for a small claim is 5.000 (five thousand) Euros⁵⁴ and cases are limited to all civil and commercial cross-border lawsuits. Within the EU in a small claim procedure no lawyers are needed, and the court's decision is automatically recognized in other EU countries. In the case of Brazil, the civil small claims courts⁵⁵ are destined to solve disputes limited to the value of 40 (forty) times the national minimum salary (nine thousand US dollars, approximately). As for the parties, only natural persons and micro-companies (article [38](#) of Law No. [9841/99](#)) are entitled to file a complaint.

Collective redress through group or class actions allows consumers to be compensated through the gathering of multiple low value claims. Consumers are represented as a group, whether by a consumer protection agency or a consumer association, depending on the country's legislation.

Class actions are frequent in common-law systems such as the United States of America, The United Kingdom and Australia, having spread to other regions such as South America⁵⁶. Yet it is less developed in continental European Union member States' systems⁵⁷. However, recently the European Commission proposed the adoption of a new directive on the protection of the collective interests of consumers as part of the "New Deal for Consumers", launched on April to ensure stronger consumer protection in the EU⁵⁸, which establishes that representative action can only be brought by "qualified representative entities" such as consumer organizations and certain independent bodies designated by member States, requiring an explicit opt-in from consumers who are not habitually resident in the member State where the collective redress action is initiated and not allowing punitive damages or other types of overcompensation.

Collective redress is a valid option when an endemic problem is identified: common and recurrent problems related to a product malfunction, or a service dysfunction, for instance.

⁵⁴ https://europa.eu/youreurope/citizens/consumers/consumers-dispute-resolution/formal-legal-actions/index_en.htm (accessed on October 10, 2018)

⁵⁵ http://www.planalto.gov.br/ccivil_03/LEIS/L9099.htm (accessed on October 10, 2018).

⁵⁶ The Brazilian and Peruvian experiences are referred to by the UNCTAD Manual on Consumer Protection, pages 84-85.

⁵⁷ Compensatory collective redress is available in 19 Member States (Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and the UK, according to the Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of the Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law (2013/396/EU), COM(2018) 40 final, 25.1.2018.

⁵⁸ <http://www.europarl.europa.eu/news/en/press-room/20190321IPR32135/new-rules-to-help-consumers-join-forces-to-seek-compensation>.

Depending on the national legislation, both consumer authorities and consumer associations are granting standing, that is to say, are entitled to lead class actions in court representing consumers. Consumer class actions represent a very important and useful tool for consumers to obtain damages in concrete cases but are also an important instrument available to assert consumer rights before traders.

The next pages refer to some of the existing examples of regional cooperation and international efforts to provide and improve consumer protection dispute resolution mechanisms.

5. INTERNATIONAL COOPERATION

Considering the global dimension of consumer issues international cooperation is extremely necessary to protect consumers across the world. In the UNGCP⁵⁹ international cooperation between member States is very much encouraged to provide better and more effective tools to protect consumers. In this sense, member States should cooperate and collaborate by exchanging consumer information and education programmes, training, investigating and acting together (chapter VI, guideline 79)

A. UNCTAD



The latest UNGCP revision (2015) confirmed the importance of consumer protection internationally and established an Intergovernmental Group of Experts on consumer

⁵⁹ http://unctad.org/meetings/en/SessionalDocuments/ares70d186_en.pdf (accessed on May 29, 2017)

protection law and policy within UNCTAD as "an annual forum ...for multilateral consultations, discussion and exchange of views" (VII. International institutional machinery, B. Functions of the Intergovernmental Group of Experts on consumer protection law and policy, guideline 97, a).

The UNGCP encourages member States to cooperate to:

- (a) Develop, review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection;
- (b) Cooperate or encourage cooperation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such cooperation could be collaboration in the setting up or joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint elaboration of regulations;
- (c) Cooperate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and quality. Such cooperation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specification.

VI. International cooperation, guideline 79

Furthermore, the UNGCP encourages member States and international bodies to promote programmes related to consumer education and information (guideline 93).

B. Hague Conference on Private International Law



The innovative initiative in the Private International Law sphere of proposing a Convention on Co-operation and Access to Justice for International Tourists was first presented by Brazil in 2015 and supported by all Latin-American countries as well as other HCCH members such as China, nowadays being in the official agenda of this Conference as one of its legislative projects. The HCCH Convention Project is international consumers initiative (as international tourists)

seeking to achieve effective access to justice through the cooperation between member States' consumer protection agencies and the judiciary.

Since tourism has an important share in the global economic activity, contributing to GDP, to employment and services exports of developed but also of several developing countries, and was identified by the revised UNGCP as demanding international cooperation, including on enforcement and information-sharing (point K. "Measures relating to specific areas", guideline 78. "Tourism"), this proposal is very timely.

In addition, the HCCH proposal illustrates international cooperation in consumer protection law as recommended by the UNGCP (point IV, guidelines 79 and 89):

89. Member States should consider participating in multilateral and bilateral arrangements to improve international judicial and inter agency cooperation in the recovery of foreign assets and the enforcement of decisions in cross-border cases.

The international consumer complaints' handling model, drafted by Brazilian experts⁶⁰, was presented together with a proposal for an international Convention on Cooperation and Access to Justice⁶¹ and can be found on Annex D. The model is based on previous experiences of international cooperation by the member States of MERCOSUR and of the European Union. The project relies on the cooperation between national consumer protection agencies on the exchange of information and on providing access to justice to international consumers (tourists or the visiting ones in transit).

C. MERCOSUR



Within the Southern Common Market (MERCOSUR⁶²) there are several efforts and actions being undertaken by the member States' national consumer protection agencies to improve

⁶⁰ The model of the international conflict resolution complaint file was elaborated by a team of experts coordinated by Professor Claudia Lima Marques of UFRGS (*Universidade Federal do Rio Grande do Sul*) in cooperation with the Brazilian Ministry of Justice.

⁶¹ <https://www.hcch.net/en/projects/legislative-projects/protection-of-tourists> (accessed on May 29, 2017).

⁶² <http://www.mercosur.int> (accessed on May 29, 2017).

the consumer protection in the region, gathered in the Working Group number 7 for Consumer Protection (CT7).

Aiming to increase consumer protection and to provide the opportunity for the MERCOSUR consumers to file a complaint, member States signed an international cooperation agreement on international consumer contracts (Acuerdo del MERCOSUR sobre derecho aplicable en materia de contratos internacionales de consumo), which determines that the applicable law to international consumer dispute shall be the most favorable one for consumers.

MERCOSUR member States also cooperate in regard to international consumer complaints through a project called⁶³ Atención a los Consumidores Turistas, where the collaboration and exchange of information of national consumer protection agencies made international complaints possible. The project was officially launched two years prior to the 2014 Football World Cup which took place in Brazil, as an incentive to improve consumer protection mechanisms. The project facilitated access for consumers to complain regardless of their location and nationality. National consumer protection agencies cooperate in the handling and mediation of consumers complaints.

D. European Union



European Union

The European Consumer policy is complemented by member States' national policies as explained earlier and the European Commission works in very close cooperation with national consumer protection policy-making representatives and enforcers, having established a regular dialogue with consumer organizations, which are supported by the EU.

The European initiatives on complaints handling and the European Consumer Centers Network have been presented, illustrating cooperation at regional level where market integration is a reality and cross-border trade remains the priority.

⁶³ http://www.mercosur.int/msweb/SM/Noticias/Actas%20Estructura/CCM-Comites%20Técnicos/CT7/2007_ACTA01/CT7_2007_ACTA01_ANE05_ES_GradoCumplimiento2006.pdf (accessed on May 27, 2017).

Out-of-court (alternative) dispute resolutions mechanisms have been the subject of harmonization efforts for over 20 years, the ADR Directive of 2013 clearly improving the overall framework and online dispute resolution (ODR)⁶⁴, has become a reality, hoping to assist consumers when doing online shopping.

Judicial dispute resolution and redress have been addressed through small claims procedures not yet fully used by consumers across the EU and through new initiatives seeking to improve collective actions.

The high quality of the European Union consumer protection products and tools are possible thanks to the common values and objectives enshrined in the EU Treaties and shared by the EU member States, due to a legal and institutional framework that depends on harmonization and on joint action. Therefore, this experience is not easy to replicate and should be followed bearing in mind the need for adjustments related to economic, social and environmental circumstances of countries and the needs of their populations, as recommended by the UNGCP (General principles, guideline 4).

In the annexes examples of models are presented, providing information on how the consumer protection bodies work both offline and online consumer dispute resolution.

6. CONCLUDING REMARKS AND RECOMMENDATIONS

Consumer complaints' handling address one of the very basic consumer rights: the right to complain and to get dispute resolution and redress. Complaints' handling is also a tool for consumer protection agencies to enforce consumer rights; to monitor markets' functioning and to assist in the drafting of consumer protection policies, therefore contributing to improve market trust and economic development.

The measures and actions undertaken by consumer agencies when handling complaints have a direct impact on their rights as citizens, since it is of the avenues for access to justice, and on their lives.

The revised United Nations Guidelines for Consumer Protection (2015) provide a very detailed and updated framework of national consumer protection frameworks, encompassing several recommendations addressed to member States' Governments, consumer associations and other relevant stakeholders such as businesses.

⁶⁴ <https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2.show&lng=EN> (accessed on 19 September 2018).

Hence, the topic of complaints handling should be explored in the light of the guidelines. The UNGCP⁶⁵ encourages and supports the work and engagement of consumer protection agencies (representatives): “Member States should provide and maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty” (ref. III. General Principles 7); “Availability of effective consumer dispute resolution and redress”, (ref. III. General Principles (g)); “Member States should work towards ensuring that consumer protection enforcement agencies have the necessary human and financial resources to promote effective compliance and to obtain or facilitate redress for consumers in appropriate cases” (V. Guidelines 15).

Recommendation 1. Member States should establish a diversity of channels for consumers to get information and complain to public bodies, directly face-to-face and using all available means of communications for consumers (telephone, e-mail, online systems). The available channels for communication should be widely publicized and template forms should be drafted for the gathering the relevant complaints' information and to facilitate the complaints' handling. Targeted awareness-raising campaigns should be organized to assist groups of vulnerable (elderly; rural population; immigrants, etc.) and disadvantaged consumers.

Recommendation 2. Member States should centralize all data on consumers' complaints received by public bodies and, if possible, also by consumer organization. Member States should develop a classification of consumer complaints highlighting sector information (goods or services and respective sectors of economic activity), the selling method, the means of payment and the reason for the complaint, apart from key data on the consumer, the trader and the transaction (value; date) to allow for its analysis and its use as a market monitoring tool. This data should be made public and discussed with sectoral regulators, competent public bodies, consumer associations and business representatives.

Recommendation 3. Business are encouraged to implement effective consumer complaints' handling systems and regularly inform consumer protection agencies of their outcome. Both business and consumer associations are strongly encouraged to follow the adopted classification of consumer complaints to ensure a homogeneous assessment of all consumer complaints.

Recommendation 4. Member States should promote the creation of alternative dispute resolution mechanisms as recommended by the UNGCP, defining its requirements in a

⁶⁵ http://unctad.org/meetings/en/SessionalDocuments/ares70d186_en.pdf (accessed on May 28, 2017).

predictable and transparent way, and should regular monitor these mechanisms' activities, ensuring that they work in coordination with consumer protection agencies.

Recommendation 5. Member States should facilitate consumer redress through inexpensive, accessible and swift means of access to the judicial system adjusted to the features of consumer claims. Collective redress mechanisms should also be made available with special standing being granted to consumers representatives (consumer associations and consumer protection agencies).

Recommendation 6. Member States are strongly encouraged to explore international cooperation (also at bilateral and regional levels) as recommended by the guidelines to tackle cross-border and global issues efficiently, improving consumer protection in the region.

All MENA countries (Algeria, Egypt, Jordan, Lebanon, Morocco, Palestine and Tunisia) have developed actions and tools for consumer complaints' handling

Considering the advice provided by the United Nations Guidelines for Consumer Protection on the issues in question to member States and relevant stakeholders and UNCTAD's mandate on consumer protection; MENA countries are invited to count on the support of UNCTAD's experts for the development and/or improvement of mechanisms and tools related to complaints' handling dispute resolution and redress.

7. ANNEXES

It provides an overview of the existing tools and mechanisms in different parts of the world. It provides several references of the development or improvement of complaints handling in out of court sphere (administrative) as well as examples of regional and international efforts to improve the attention to consumer protection matters.

A. Consumer Agency model -Egypt⁶⁶ (Local)

Complainant Data	
Name	
Non-Egyptian.	
Gender	
Male	Female
Job	
Age	
Governorate	
Select Governorate	
Area	
Address	
Home Phone	
Work Phone	
Mobile	
01_ - ____ - ____	
Email	
National ID	
_ - _____ - _____	
Product / Service Information	
To be informed: if you didn't attach needed documents during complaint filing or you didn't send them to the complaint center during 2 days, this complaint will be ignored.	
Product Type	
Select Product Type	
Needed Documents	
Purchase Date	

⁶⁶ <https://www.cpa.gov.eg/en-us/Complaints/Complaint-filing> (accessed on May 26, 2017).

Price
Attachments
Complaint Details
Vendor Information
Name
Activity
Governorate
Select Governorate
Address
Phone
Other Data
Complaint Details
Complaint Details
Did you try to solve the problem amicably?
Yes No
If yes, what is the result?
Incorrect Security Code

**B. European Model⁶⁷
(Regional)**

You can search our records using the trader's name or website. If we have the trader's details, they will be filled out automatically in the form below.
If not, you can give us the trader's details.
Find the trader in the list
What is the trader's name? *
What is the trader's email address? *
What is the trader's website? *

⁶⁷ <https://ec.europa.eu/consumers/odr/main/?event=main.about.show> (Accessed on 26 May, 2017)

Which country is the trader based in? *
What is the trader's address?
Street *
Postcode
City
Reset
Which good or service did you buy? *
When did you buy the good/service? *
Day / month / year
How much did you pay? *
What is the reference number of your order?
What is the type of the complaint? *
Please describe your complaint in detail * Maximum characters: 4000
<i>Maximum number of characters left: 3993 characters</i>
What are you asking for? * Maximum characters: 4000
<i>Maximum number of characters left: 3993 characters</i>
<u>Do you want to attach documents to your complaint? (optional)</u>
Have you already contacted the trader about your complaint? *
<input type="radio"/> Yes
<input type="radio"/> No
Have you already tried to reach an out-of-court settlement or taken the other party to court over your complaint? *
<input type="radio"/> Yes
<input type="radio"/> No
Does the trader want to use a specific dispute resolution body? *
<input type="radio"/> Yes
<input type="radio"/> No
What is your name?
First name *

Family name *
Where do you live?
Street *
Postcode *
City *
Country *
In which language(s) do you want to receive messages from this site? *
What is your email address? *
What is your phone number?
Is somebody representing you over the complaint? *
<input type="radio"/> Yes
<input type="radio"/> No
Go to previous step
SUBMIT YOUR COMPLAINT

C. HCCH Model⁶⁸
(International)

Annex to the Convention (example of Multiple Language Complaint Form - final text will be in English and French only)
<u>COMPLAINT FORM FOR TOURISTS AND VISITING CONSUMERS</u>
(Formulaire de réclamation pour le touriste consommateur – Formulário de reclamación – Formulário para reclamações dos turistas, visitantes e consumidores) Ing-Fr-Esp-Port
Case Nr./Cas n./Caso n. : _____/20 Date: ____/____/_____
I – CONSUMER DATA – IDENTIFICATION DU CONSOMMATEUR – IDENTIFICACIÓN DEL CONSUMIDOR – IDENTIFICAÇÃO E DADOS SOBRE O CONSUMIDOR
1. Name and Surname / Nom complet / Nombre y Apellidos / Nome completo:

⁶⁸ <https://assets.hcch.net/docs/74b12153-45a4-45fa-a86e-814fa5bf9d2a.pdf> (accessed on May 26, 2017)

2. Type and number of document / Document d'identification / Número y tipo del documento / Tipo e número do documento:
_____ - _____
3. Country of issue/ Pays du document / País de origen/ País de origem:

4. Country of habitual residence / Pays de résidence / País de residencia / País de residência:

5. Address at the home State /Adresse d'origine /Dirección/Endereço principal completo:

6. City / Ville / Ciudad / Cidade: _____
7. Country / Pays / País / País: _____
8. Phone Numbers / Numéros de téléphone / Teléfonos / Telefones:
+ _____ + _____
<i>Ex: +55 61 2222222</i>
9. E-mails:

10. Alternative Address at the visited State / Adresse provisoire dans la pays visité / Dirección provisoria en el país visitado / Endereço provisório no país visitado:

11. Nationality / Nationalité / Nacionalidad / Nacionalidade: _____

12. Travel date / Date de départ / Fecha de partida / Data da viagem:
____/____/_____
13. Optional information / Informations optionnelles / Informaciones opcionales / Informações opcionais
Ocupation / Profession / Ocupación / Profissão:

Professional Address / Adresse professionnelle / Dirección profesional / Endereço profissional:

Phone / Téléphone / Teléfono / Telefone : + _____
E-mail: _____
II - CONSUMER CENTER OR AGENCY / ORGANE DE PROTECTION DU CONSOMMATEUR / ÓRGANO DE PROTECCIÓN AL CONSUMIDOR / ÓRGÃO DE PROTEÇÃO AO CONSUMIDOR

III - SUPPLIER DATA / PROFESSIONNEL RECLAMÉ / DATOS DEL PROVEEDOR / DADOS DO FORNECEDOR
1. Trade name / Nom commercial / nombre comercial / nome comercial de fantasia:

2. Legal name / Nom légal / Razón social / razão social:

3. Registration number / Numéro de registre / Registro legal / CNPJ:

<hr/> <hr/>	
4. Market sector / Secteur d'activité / Sector de actuación/ Ramo de atividade:	
<hr/> <hr/>	
5. Address / Adresse / Dirección / Endereço:	
<hr/> <hr/> <hr/>	
6. Phones / Numéros de téléphone / Teléfonos / Telefones:	
+ _____ + _____	
7. Website:	
<hr/> <hr/>	
8. E-mails:	
<hr/> <hr/>	
9. Contact person / Responsable / Responsable / Responsável:	
<hr/>	
IV – COMPLAINT / RÉCLAMATION/ RECLAMACIÓN /RECLAMAÇÃO	
1. Date of incident / Date de la réclamation / Fecha del incidente / Data do problema: ____/____/____	
2. Reason for complaint / Cause de la réclamation / Motivación / Motivo da Reclamação:	
<hr/>	
1. Transport/Transporte: Air/Aéreo.....Bus/Omnibus.....Taxi/Automotor:..... (Late service/demora.....overbooking..... Rent a Car/Alquiler de autos..... (quality of the cars/calidad de los vehículos)..... other/Autre / otros.....	
2. Hotel/Hôtel / Alojamiento..... Reservation/reservas:.....	

<p>3. Travel agency/Agence de voyage/Agencia de Viajes.....Defect services/incumplimiento de servicios de terceros..... other/autre/otros.....</p> <p>4. High prices for foreignrs/Prix différents pour les touristes étranger/Precios diferenciados a turistas extranjeros.....</p> <p>4ª Sightseeings</p> <p>5. Museums/ Museos/Musées/Museus.....</p> <p>6. Tickets/Entry/Games/Entrée/Entradas.....National Parks/Parques nacionales.....</p> <p>7. Restaurants/Gastronomie/Gastronomía.....Quality/Qualité / calidad.....Prices/Prix /sobrefacturación.....</p> <p>8. Security/Sécurité /Seguridad.....Violency/Violence / Violência..... Erassment/Asedio.....</p> <p>9. Products/Produits/Produtos.....</p> <p>10. Other problems/Autres problèmes/ Otros.....</p> <p>.....</p> <p>.....</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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3. Measures taken to settle the conflict / Intervention de l'Agence / Medidas tomadas para resolver el conflicto/ Medidas tomadas para resolver o conflito:

4. Means of evidence / Documents et preuves / Pruebas y documentos / Meios de prova e documentos:

5. Complaint's Petition/ Demande / Pedido / Petição:

6. Signature / Signature / Firma / Assinatura:

7. Results/Résultats/Resultados:

8. Legal aid: <input type="checkbox"/> available <input type="checkbox"/> not available
Contact person: _____
Assistance juridique: <input type="checkbox"/> existante <input type="checkbox"/> pas existante
Responsable: _____
Asistencia jurídica: <input type="checkbox"/> existente <input type="checkbox"/> no existente
Persona responsable: _____
Assistência jurídica: <input type="checkbox"/> existente <input type="checkbox"/> não existente
Responsável: _____
9. Consumer satisfaction / Satisfation du consommateur / Satisfacción del consumidor / Grau de satisfação do consumidor: _____
<i>0 (not satisfied / pas contente / no contento / não satisfeito)– 10 (very satisfied / très contente / muy contento/muito satisfeito)</i>

8. REFERENCES

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