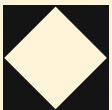


Stephanie Law | Vincent Richard (eds.)

Public and Private Enforcement of Consumer Law – Insights for Luxembourg



Nomos



Max Planck Institute
LUXEMBOURG
for Procedural Law

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**Public and Private
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Foreword

When I was appointed Minister for Consumer Protection in late 2018, the European legislature was finalising a large package of new EU rules reinforcing consumer rights and means of redress with legislative proposals modifying existing rules or introducing new rules, be it on collective redress or enforcement powers. It makes perfect sense, that my ministry is now responsible for translating these rules into the Luxembourg legislative framework. At the same time, it is the perfect opportunity for us to cast a deeper look on the current state of consumer protection in Luxembourg!

Enforcement, or the act of obliging actors to comply with consumer law, features prominently on the agenda of the current Government who wants to strengthen both consumer confidence and trust. The introduction of a new mechanism for collective redress, for instance, is proof of such a commitment. This however is only one piece of a whole structure geared towards strengthening consumer confidence.

For a small but growing market of roughly 650.000 inhabitants and 200.000 incoming cross border workers on a daily basis, situated at the heart of the European Union, efficient and effective protection of consumers remains a challenging balancing act.

With only few exceptions, the Luxembourg economy is not self-sufficient. Undeniably, the resulting openness of our economy provides an immense opportunity for consumers and traders alike and needs to be safeguarded. Effective enforcement measures require setting in place protections against rogue traders and ensuring that non-compliance and cutting corners is not only unacceptable but also unprofitable.

I appreciate that the Max Planck Institute Luxembourg scrutinised the framework not only in our neighbouring countries but also turned their attention to jurisdictions traditionally slightly less familiar to us, namely England & Wales as well as Estonia. Such comparison shall fuel our national debate on how to streamline the enforcement of consumers' rights while respecting the specificities of a small yet open market. Thoroughly thought through enforcement is a vital component for its success.

As a Government, we aim to act with foresight. In my role, this means providing a modern and flexible enforcement model, which keeps up with the ever faster technological and social changes. We need to make sure that enforcement can evolve without disruption. We should not shy away from criticism but strive to learn from our own experiences and that of

Foreword

our peers. This way, we can *Make it Happen* and the enhanced enforcement framework will continue to strengthen the trust of our consumers in the products and services of our businesses.

I am therefore grateful to Professor Hess and his team for their valuable research and analysis.

I am convinced that we have much to learn from academia. At the same time, we can feed their thinking with our actions. Together, we will set the track for the future.

Paulette Lenert, Minister for Consumer Protection, June 2021.

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Abbreviations

ABTA	Association of British Travel Agents
ACA	Luxembourg Insurance and Reinsurance Association (<i>Association des Compagnies d'Assurances</i>)
ACCA	Association of Chartered Certified Accountants
ACPR	Prudential Supervision and Resolution Authority (<i>Autorité de Contrôle Prudentiel et de Résolution</i>)
ADR	Alternative Dispute Resolution
ALIA	Luxembourg Audiovisual Regulator (<i>Autorité luxembourgeoise indépendante de l'audiovisuel</i>)
AMF	Financial Markets Regulator (<i>Autorité des Marchés financiers</i>)
ANJ	Gambling Regulator (<i>Autorité Nationale des Jeux</i>)
ANSES	Agency for Food, Environmental and Occupational Health & Safety (<i>Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail</i>)
ANSM	National Agency for the Safety of Health Products (<i>Agence Nationale de Sécurité du Médicament et des Produits de Santé</i>)
ARCEP	Electronic Communication and Postal Services Regulator (<i>Autorité de Régulation des Communications Électroniques et des Postes</i>)
ARPP	Advertising Regulation Authority (<i>Autorité de Régulation Professionnelle de la Publicité</i>)
Asbl	Non profit organization (<i>association sans but lucratif</i>)
BCA	Belgian Competition Authority
BEIS	Department for Business, Energy and Industrial Strategy
BIPT	Belgian Institute for Postal services and Telecommunications
BPRs	Business Protection from Misleading Marketing Regulations
Brugel	Brussels Commission for the Regulation of the Electricity and Gas Market)
BVRLA	British Vehicle Rental and Leasing Association
C. Com	Commercial Chamber of the French <i>Cour de cassation</i> (civil Supreme Court)
CAA	Insurance Commissioner (<i>Commissariat aux assurances</i>)
CAB	Citizens Advice Bureau (consumer association)
CAT	Competition and Appeals Tribunal
CCA	Unfair Terms Commission (<i>Commission des clauses abusives</i>)
CCC	<i>Contrats, Concurrence, Consommation</i> (LexisNexis Review)
CCLV	Luxembourg Commission of Travel Disputes
CDR	Consumer ADR
CE	Conseil d'Etat (administrative Supreme Court)

Abbreviations

CECMC	Consumer Mediation Evaluation and Control Commission (<i>Commission d'évaluation et de contrôle de la médiation de la consommation</i>)
CEDR	Centre for Effective Dispute Resolution
CEO	Chief Executive Officer
CIGDL	Real Estate Chamber of Luxembourg (<i>Chambre immobilière du Grand-Duché de Luxembourg</i>)
CISAS	Communications and Internet Services Adjudication Scheme
Civ. 1 st	First civil chamber of the French <i>Cour de cassation</i> (civil Supreme Court)
CMA	Competition and Markets Authority
CMCC	Civil and Commercial Mediation Centre
CMFC	Mediation Commission for Franchise Consumers (<i>Commission de Médiation Franchise Consommateurs</i>)
CNA	National Food Council (<i>Conseil National de l'Alimentation</i>)
CNC	National Consumer Council (<i>Conseil National de la Consommation</i>)
CNIL	Commission on Information Technology and Liberties (<i>Commission Nationale de l'Informatique et des Libertés</i>)
CNPD	<i>La Commission nationale pour la protection des données</i> (The National Commission for Data Protection)
COMEOS	Belgian Federation of Commerce and Services (<i>Fédération belge du commerce et des services</i>)
Cons. Code	Consumer Code (<i>Code de la consommation</i>)
CoRD ⁱ S	Energy Regulator Dispute Resolution Body (<i>Comité de Règlement des Différends et Sanctions</i>)
CPC	Consumer Protection Cooperation Regulation
CPRs	Consumer Protection from Unfair Trading Regulations
CRA (2015)	Consumer Rights Act 2015
CRE	Energy Regulator (<i>Commission de Régulation de l'Énergie</i>)
CREG	Federal Commission for Energy and Gas Regulation
CSA	French Superior Council of Broadcasting (<i>Conseil Supérieur de l'Audiovisuel</i>) or Belgian High Commission for Audio-visual Services
CSP	Code of Public Health (<i>Code de la santé publique</i>)
CSSF	Luxembourg Financial Regulator (<i>Commission de Surveillance du Secteur Financier</i>)
CTA	Regional Broadcasting Committees (<i>Comités territoriaux de l'audiovisuel</i>)
CTSI	Chartered Trading Standards Institute
CWaPE	Walloon Commission for Energy
DETI	Department of Enterprise, Trade and Investment in Northern Ireland
DG EI	Directorate General of Economic Inspection

Abbreviations

DGCCRF	General Directorate for Competition Policy, Consumer Affairs and Fraud Control (<i>Direction générale de la Concurrence, de la Consommation et de la Répression des fraudes</i>)
DGFT	Director General of Fair Trading
DIRECCTE	Regional Directorate of Businesses, Competition, Consumers, Work and Employment (<i>Directions régionales des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi</i>)
DPA	Data Protection Authority
DQ	Directions Questionnaire
DRO	Dispute Resolution Ombudsman
DSRs	Consumer Protection (Distance Selling) Regulations
ECC	European Consumer Centre Luxembourg (<i>Centre européen des consommateurs Luxembourg</i>)
ECHR	European Convention on Human Rights
ECMs	Enhanced consumer measures
eCOGRA	eCommerce Online Gaming Regulation and Assurance
ECtHR	European Court of Human Rights
EEA	European Economic Area
ELC	Economic Law Code
EOP	European Order for Payment (Reg. 1896/2006)
EPA	Public Administrative Establishments (<i>Établissement Public Administratif</i>)
EPIC	Industrial and Commercial Public Establishments (<i>Établissement Public à Caractère Industriel et Commercial</i>)
ESCP	European Small Claims Procedure (Reg. 861/2007)
FAMHP	Federal Agency for Medicines and Health Products
FASFC	Federal Agency for the Safety of the Food Chain
FCA	Financial Conduct Authority
FEA	Flemish Environmental Agency
FOS	Financial Ombudsman Service
FSMA	Financial services and markets authority
FSO	Financial Services Ombudsman
GDPR	General Data Protection Regulation (Reg. 2016/679)
GIE	Economic Interest Group (<i>Groupement d'intérêt économique</i>)
GLO	Group Litigation Order
HIO	Home Improvement Ombudsman
HL	House of Lords
IBAS	Independent Betting Adjudication Service
ILR	Luxembourg Regulation Institute (<i>Institut Luxembourgeois de Régulation</i>)
INC	National Consumer Institute (<i>Institut National de la Consommation</i>)
IoM	Isle of Man Gambling Supervision Commission
JC	Judicial Code

Abbreviations

LNE	National Metrology and Testing Laboratory (<i>Laboratoire National de Métrologie et d'Essais</i>)
MC	Media Council
MiFIR	Market in financial instruments regulation (Reg. 600/2014)
MoU	Memorandum of Understanding
NCPC	New Code of Civil Procedure
NHS	National Health Service
ODR	Online Dispute Resolution
OECD	Organisation for Economic Co-operation and Development
OFCOM	Office of Communications
OFGEM	Gas and Electricity Markets Authority
OFT	Office of Fair Trading
Ofwat	Water Services Regulation Authority
ORR	Office of Rail Regulation
QBD	Queen's Bench Division of the High Court
SME	Small and medium-sized enterprises
SNMC	National Consumer Mediator
SOGA (1979)	Sale of Goods Act 1979
SoLLEn	Online mediation platform of the Energy mediator (<i>Solution en ligne aux litiges d'énergie</i>)
STIB	Brussels Intercommunal Transport Company (<i>Société des Transports Intercommunaux de Bruxelles</i>)
TSSs	Trading Standards Services
UCTD	Unfair Contract Term Directive
UKCN	UK Competition Network
UKSC	Supreme Court of the United Kingdom
ULC	Luxembourg Consumer Organisation (<i>Union luxembourgeoise des consommateurs</i>)
UTCCRs	Unfair Terms in Consumer Contract Regulations
VAT	Value Added Tax
VMM	Flemish Environmental Agency
VoD	Video on demand
VREG	Flemish Regulatory Authority for the Electricity and Gas Market
VRM	Flemish Media Regulator
VSZ	Verbraucherschutzzentrale VoG
VW	Volkswagen
WCAM	Dutch Act on Collective Settlement of Mass Damages Claims (<i>Wet Collectieve Afwikkeling Massaschade</i>)
WICS	Water Industry Commission for Scotland