Meeting with BusinessEurope

Director General Office, 27 June 2022, 15:30

Scene setter
You are meeting with [Name] of BusinessEurope, at his request, to discuss current topics. It will be a "first" meeting and the topics for discussion may be broader but will include: sustainable corporate governance, successor arrangement to the Privacy Shield, the privacy rules revision, consumer policy, etc.

BusinessEurope is a well esteemed member of the Consumer Policy Advisory Group.

Corporate Sustainability Due Diligence

- The Commission has adopted the proposal for a Directive on corporate sustainability due diligence on 23 February 2022. The proposal was presented in the COMPET Council on 24 February and JHA Council on 4 March. The Company Law Council Working Party started the analysis of the file under French Presidency.
- In the European Parliament, the file has been presented to the JURI, INTA and ENVI committees; a joint inter-parliamentary meeting of the JURI and DROI committee and national parliaments took place. There is eagerness to work swiftly on the file which is considered as of key importance, but a timetable has not been set yet as competence discussions are ongoing.
- BusinessEurope has participated in the open public consultation on the initiative and DG JUST has received informally their feedback to the adopted proposal, outside the feedback period, laying out key conditions that must be met related to, inter alia, workability, proportionality, legal certainty and level playing field.

Successor arrangement to the Privacy Shield

- For a business interest group as BusinessEurope, the Privacy Shield successor arrangement is of high importance and will, therefore, likely be raised in the discussion.
- In a Joint Statement of 8 March 2022, BusinessEurope and the U.S. Chamber of Commerce on the Significance of Legal Certainty for Data Flows to the US-EU Economic Relationship both interest groups underlined the increasing economic importance of data flows for the EU-US economies as these transition towards a more digitally connected and sustainable society for which secure data transfers are foundational. They call on “the European Commission and on the U.S. Administration to swiftly conclude a robust new framework for data transfers, addressing the problems which led to the invalidation of the Privacy Shield, and upholding our shared transatlantic values of privacy and security” and to “remove growing uncertainty around the role of standard contractual clauses”, in particular for small and medium-sized businesses.
- You may therefore want to provide an update on the announcement of 25 March 2022 of the EU and US on an agreement in principle on a new Trans-Atlantic Data Privacy Framework that would replace the invalidated Privacy Shield arrangement.
- Like the Privacy Shield, this new framework will take the form of a Commission adequacy decision, on the basis of which personal data could flow freely from the EU to participating companies in the US.
- While there is an agreement in principle, the two sides will now need to translate it into legal texts. In particular, the U.S. commitments will be included in a new Executive Order and implementing regulations that will form the basis of the Commission’s assessment in its future adequacy decision. We are currently waiting to receive draft texts from the US. Once received,
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Further discussions on these drafts may be needed, to make sure that they fully reflect what was agreed. The Commission will only be able to propose a draft adequacy decision when the text of these legal instruments will have been agreed.

- Taking into account the different procedural steps (opinion of the EDPB, green light from the Member States in comitology), a final adequacy decision could at the earliest be adopted by the end of this year/early next year.
- Regarding ongoing discussions in the US on a possible federal privacy law, you may want to stress that it would be in everyone’s interest, including the business community, that what happens in the US is convergent with what is happening in the rest of the world (i.e., the adoption of privacy laws based on the same core data protection principles, individual rights and strong independent enforcement).

Privacy rules revision

- In June 2020, the first two-yearly GDPR evaluation stated that it is premature at that stage to draw definitive conclusions on the application of the GDPR. Most of the issues identified in the report would benefit from more experience in applying the Regulation and there has indeed been progress since.
- The next evaluation is due in 2024 when it will be assessed whether it will be appropriate to propose amendments to the GDPR.

Consumer policy

- In relation to the Sustainable consumption pledge, we will contact BusinessEurope (and other EU business stakeholders) to:
  - arrange participation of Commissioner Reynders to the European Business Summit scheduled to take place 16-17 November;
  - to understand how BusinessEurope could help to encourage their members to join the pledge. We would be particularly interested to organise a dedicated event possibly early September.
- JUST had the occasion to present on 17 June to BusinessEurope’s Consumer Committee the Proposal on Empowering Consumers for the Green Transition. BusinessEurope provided constructive inputs. As a next step, BusinessEurope will develop a position paper that will provide input to the discussions with the co-legislators.
  - General Product Safety Regulation: On 30 June 2021, the Commission adopted a proposal for a new General Product Safety Regulation (GPSR) aiming at updating and modernising the general framework for the safety of non-food consumer products to preserve its role as a safety net for consumers and ensure a level-playing field for businesses. The co-legislators are now analysing the proposal. BusinessEurope provided inputs on the COM proposal. We have presented the GPSR proposal to BusinessEurope members in October 2021.
  - EU-U.S. Dialogue: You will have the opportunity to inform about the launch of the EU-U.S. informal dialogue on consumer protection. Our U.S. counterparts are the Federal Trade Commission (FTC), the Consumer Product Safety Commission (CPSC) and the Consumer Financial Protection Bureau (CFPB).
  - You could briefly mention the ongoing review of the Package Travel Directive.
  - Consumer Credit Directive review: On 30 June 2021, the Commission adopted a new proposal for a Directive on consumer credits repealing and replacing the Consumer Credit Directive. The COMPET Council reached a General Approach on 9 June. Regarding the EP, IMCO is expected to vote in July. COM hopes trilogues can be concluded by the end of the
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Year.

- **Distance Marketing of Financial Services**: You will have the opportunity to inform about the main content of this Proposal that was published on 11 May 2022.

**LTT**

**Corporate Sustainability Due Diligence**

- Thank the interlocutor for the **active participation throughout the consultation process** for this initiative.

- Acknowledge the **position paper provided in response to the proposal** on corporate sustainability due diligence and reassure the concerns brought forward are well noted.

- As regards **effectiveness, workability and proportionality** of the obligations, as proposed by the interlocutor, reaffirm that the proposal sets out a **harmonised, coherent and proportionate EU approach** on corporate sustainability due diligence, to address adverse impacts in the company’s own operations, its subsidiaries and its value chains, where most of the negative impacts occur. The coverage of the entire value chain is key to achieve the objective of the proposal i.e. to address adverse impacts related to production chains.

- As regards **providing legal clarity**, as proposed by the interlocutor, reaffirm that the due diligence duty is **aligned with internationally recognised human rights and labour standards** while the concepts therein are tailored to the mandatory nature of the duty, by e.g. limiting the duty to **established business relationships**, capturing those **relationships where most harm occurs**. As contracts will be a key tool of compliance for companies, the Commission plans to adopt **guidance about voluntary model contract clauses** as a supporting tool for this purpose.

- As regards **establishing balanced enforcement and sanctions mechanisms**, as proposed by the interlocutor, reaffirm that **civil liability** makes a difference in driving good corporate behaviour and therefore the new rules require Member States to **harmonise certain aspects** of their civil liability rules. This will add to legal certainty. As regards the **administrative enforcement** leg, the European network of Supervisory Authorities will ensure a coordinated approach.

- As regards **ensuring a non-punitive approach**, as proposed by the interlocutor, reaffirm that “termination of contract” is seen as the last resort while **fostering engagement is the aim**. To support companies in this endeavour, a number of tools such as hotlines, databases, training, etc. are planned.

- As regards **less interference with corporate governance models**, as proposed by the interlocutor, reaffirm the need for **directors to have a key role in implementing and supervising the due diligence obligation**, including by integrating it into the corporate strategy. Linking directors’ **variable remuneration** in larger companies to climate change targets is part of incentivising the protection of **long-term interests and sustainability** of the company for which climate change is a major consideration.

- Reassure the interlocutor that the new rules are expected to bring **multiple benefits to EU**
companies. This includes a harmonised legal framework in the EU, a level playing field, competitiveness and improved performance, greater innovativeness, better risk management and resilience as well as better access to finance.

Successor arrangement to the Privacy Shield

- On 25 March, President von der Leyen and President Biden announced an agreement in principle for a new transatlantic data transfer framework to replace the Privacy Shield.
- This was certainly an important step, but the work continues.
- We are now finalising the details to translate the agreement in principle into legal texts.
- In particular, the US commitments have to be included in a new Executive Order to be adopted by the US President and implementing regulations.
- I understand that our US counterparts are currently working on drafts of these different legal instruments.
- We will then look together at these drafts to make sure they fully reflect what we have agreed on.
- Our objective is to make sure that we have a solid foundation for a future adequacy decision.
- Because that will be the next step: once we will have agreed on the text of these legal instruments, the Commission will be able to propose a draft adequacy decision on that basis.
- To adopt the final decision, we will need to go through a multi-step process that involves an opinion from the European Data Protection Board, a vote of our Member States and scrutiny by the European Parliament.
- Because of the work that remains to be done and the different procedural steps we need to go through, it is difficult to give a precise timeline at this stage.
- Based on our experience with previous adequacy decisions, if everything goes well, we could be able to adopt the adequacy decision around the end of this year in the first quarter of next year.
- Finally, it is important to mention that the safeguards we have negotiated on US public authorities’ access to data will apply to all transatlantic transfers, not only the ones based on the future adequacy decision. This should notably facilitate the use of transfers mechanisms – on which European companies extensively rely – such as the Standard Contractual Clauses (SCCs) and Binding Corporate Rules (BCRs).

Application of the GDPR

- We are in the middle between the first and the second evaluation of the GDPR.
- As underlined in our two-year GDPR evaluation report published in June 2020, we believe that it would have been premature at that stage to draw definitive conclusions on the application of the GDPR. Most of the issues identified in the report will benefit from more experience in applying the Regulation in the coming years.
• Indeed, there has been progress since.
  o For example, we had identified the need for a more European approach from national data protection authorities, with more efficient working arrangements between them, including when it comes to cross-border cases. The European Data Protection Board (EDPB) has worked on this, publishing several guidelines on the cooperation and consistency mechanism. Just recently, at their meeting in Vienna the end of April, the members of the EDPB restated their commitment to make the one-stop-shop work more efficiently.
  o On the Commission side, we have published standard contractual clauses both for controller-processor contracts inside the Union and for transfers outside the Union/EEA. These will make it easier for companies to comply with their obligations under the GDPR.

• The next evaluation is due in 2024.

**Consumer policy**

**New Consumer Agenda**

- We are following up on the commitments we made in the New Consumer Agenda: we have delivered on 11 of the 22 activities, while 8 are ongoing and 3 are set to start in the future.
- In the governance of the New Consumer Agenda, we have set up the Consumer Policy Advisory Group that has met three times since its creation, and is set to meet again after summer.
- BusinessEurope is a member of the CPAG, and participates in the meetings where implementation of the New Consumer Agenda is discussed.

**Sustainable consumption pledge**

- The Commission is inviting companies to take a voluntary pledge to support sustainable consumption, beyond what is required by law.
- This initiative is also part of the New Consumer Agenda, [for non-food companies - food and drinks companies are welcome to join DG SANTE Code of conduct].
- A pilot was launched in January 2021, and 11 EU companies have already taken a pledge to reduce their carbon footprint and other commitments to improve the sustainability of their production and/or consumption of their services.
- Building on this success, we are inviting more EU companies to join. Now we are asking companies to reduce their carbon footprint, while also committing to at least another aspect of sustainable consumption. This could be reducing their environmental footprint, switching to a more circular business model, and/or respecting social sustainability aspects.
- Commissioner Reynders is planning to attend the European Business Summit scheduled for the 16-17 November, and we hope to organise a high-level panel in relation to the pledge in order to show commitments from EU CEOs (who have already or are in the process of joining the pledge) towards more sustainable production and consumption.
• My colleagues will also be in touch to see how your organisation may help us to promote this initiative to your members. We would like to suggest to even consider organising a dedicated joint event with your organisation, for instance early September.

Empowering Consumers for the Green Transition proposal

• The proposal for a Directive on Empowering Consumers for the Green Transition was adopted on 30 March as part of a wider Commission package on Circular Economy. The initiative was announced in the New Consumer Agenda and in the Circular Economy Action Plan in 2020 and is the key contribution from EU consumer law to the Green Deal objectives set out in 2019.

• It will empower consumers by providing better information at the point of sale on aspects such as the durability and reparability of products. It will also better protect consumers against greenwashing and early obsolescence practices.

• The proposal introduces targeted amendments to existing EU consumer law, namely the Consumer Rights Directive and the Unfair Commercial Practices Directive.

• This will provide for a horizontal safety net where other EU-level technical or sector-specific instruments are/can be providing more detailed rules, such as the proposed Ecodesign for Sustainable Products Regulation (adopted on 30 March as well).

• COM welcome very much the constructive role of BusinessEurope in this policy area. in the past, Business Europe was an active member of JUST’s Multi-stakeholder Dialogue on Environmental Claims (via its Director legal affairs Pedro Oliveira)

• JUST had the opportunity to present the proposal on 17 June to BusinessEurope members active in their consumers committee and replied to the questions received. As a next step, BusinessEurope expects to finalise its position paper on the proposal by mid-July.

Package Travel Directive

• The Commission is currently reviewing the Package Travel Directive. This was announced in the New Consumer Agenda of November 2020.

• The overall aim is to defend the high level of consumer protection guaranteed by the Package Travel Directive, while making it more crisis-proof.

• We will examine any shortcomings of the current rules and assess possible solutions.

• We will also examine whether we can achieve more coherence between the Package Travel Directive and the passenger rights regulations. The review of the EU passenger rights regulations is carried out in parallel under the leadership of Commissioner Vâlean.

• Intensive information gathering and consultations are currently taking place. We are analysing the results of a public consultation that closed in May. Targeted consultations of stakeholders will follow. An external study is conducted in parallel.

• Currently, we plan for the review to be concluded in spring 2023, a legislative proposal could then follow.

General Product Safety Regulation (GPSR)
The Commission’s proposal for a new General Product Safety Regulation adopted in June last year aims at updating and modernising the general framework for the safety of non-food consumer products to preserve its role as a safety net for consumers and ensure a level-playing field for businesses.

The proposal would, among other aspects:

- Improve the safety of products linked to new technologies and addressing challenges posed to product safety by the growth of online sales, including via online marketplaces.
- Ensure coherence between the GPSR and the other current proposals, such as the Digital Services Act (DSA) and the Artificial Intelligence Act is also a priority for the Commission to provide a clear and coherent legal framework for businesses operating in the EU.
- The Commission welcomes the progress made by the co-legislators on the text and the priority they gave to it and thanks BusinessEurope and other stakeholders for their valuable input in the revision process.

EU-U.S. informal dialogue on consumer protection

- We recently launched an informal dialogue with the U.S. authorities on consumer protection further to Commissioner Reynders’ meetings with the chairs of the U.S. Federal Trade Commission and the U.S. Consumer Product Safety Commission. We are also engaging with our U.S. counterparts at the Consumer Financial Protection Bureau, and we will launch the dialogue soon.
- We aim to strengthen our cooperation in key areas for consumer protection, such as the digital and green transition. This can help setting the global standards of enforcement along the current practice of the EU and the U.S.
- This dialogue can build on our solid and long-lasting cooperation including at OECD, UNCTAD, and ICPEN as well as trilateral EU-U.S.-China high-level cooperation on product safety. But we are also reflecting on how stakeholder’s experience can feed into this dialogue. One idea that we are discussing with our U.S. counterparts is to organise a transatlantic event involving various stakeholders.

Consumer Credit Directive review

- CZ presidency intends to hold trilogues rapidly.
- In Council, the General approach was adopted at the Competitiveness Council of 9 June.
- In Parliament, the vote in IMCO is expected in July, and vote in plenary could then take place in September.

Distance Marketing of Financial Services

- Inform about the recently published proposal on the review of the Distance Marketing of Financial Services Directive.
- Recall that the proposal aims at ensuring a framework for the distance marketing of financial services that is future proof, protects consumers in the digital environment, delivers a level playing field and reduces unnecessary burden for financial service providers.
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- The proposal calls for the repeal of the current Directive and inserts its relevant provisions on pre-contractual information, right to withdrawal into the Consumer Rights Directive.

- Inform your interlocutor that this Proposal is a low lying fruit, in the sense that it contains a small number of articles and thus can be swiftly negotiated and possibly concluded under the CZ Presidency.
DEFENSIVES

Application of the GDPR

Is the GDPR applied and enforced properly?

- Yes, it is. By the Data Protection Authorities (DPAs), individually and collectively in the context of the European Data Protection Board (EDPB), and by the national courts, as provided by the Regulation.
- The Commission also plays its part through the infringement proceedings that we do not hesitate to launch – when of course they are justified. And, very importantly, the many rulings of the CJEU have already provided and will provide in the future extremely useful interpretations on key issues on how the GDPR should be applied.

Does the enforcement system of the GDPR work? Is it necessary to enhance it?

- The debate on how to enhance enforcement of the GDPR is legitimate and it is the responsibility of all actors to work on further improving how the GDPR works in practice.
- The Commission has consistently underlined the need for all DPAs to ramp up their efforts in enforcing the GDPR – and the GDPR provides for a variety of tools for them to cooperate efficiently and effectively. For instance, the DPAs have recently adopted guidelines that will streamline the application of the cooperation mechanism. This is the result of over one year of intensive common work. More generally, the strong willingness of the EDPB members to further improve their cooperation should be welcomed and encouraged by all of us.
- In this context, the Commission welcomes the recent decision taken by heads of DPAs at the meeting of the European Data Protection Board (EDPB) in Vienna (27-28 April 2022) to send a united message on their willingness to strengthen cooperation on strategic cross-border cases.
- At the same time, the enforcement of the GDPR sometimes touches on issues that affect the very business model of big tech multinational companies. In such cases, investigations and decisions by DPAs will obviously take much more time than more routine cases. Furthermore, in most instances, those decisions will be challenged in courts. The credibility of enforcement lies not only in adopting decisions, but also in defending them in front of the courts.
- The implementation and enforcement of the GDPR are essential also because data protection rules are more and more at the core of new key EU legislative initiatives, in particular the series of proposals in the digital field: Data Governance Act, Digital Markets Act, Digital Services Act and the recent Data Act.
- The issues raised in relation to the GDPR enforcement will feed into the Commission’s reflection in view of the preparation of the next evaluation of the GDPR, which will take place in 2024.
BACKGROUND

Corporate Sustainability Due Diligence

Both the European Parliament and the Council have called for EU-level horizontal rules in the field of sustainable corporate governance, and momentum in the market has also been building in support of this initiative to ensure a harmonised and coherent approach in the Single market. More specifically, the Employment, Social Policy, Health and Consumers Affairs (EPSCO) Council Conclusions of 3 December 2020 on Human Rights and Decent Work in Global supply chains called for a proposal from the Commission for an EU legal framework on sustainable corporate governance, including cross-sector corporate due diligence along global supply chains.

BusinessEurope comments on the CSRD proposal:

While supporting the aim to have an EU due diligence framework that is effective, workable, creates a level playing field and does not hold European companies responsible for factors beyond their control, the interlocutor finds that the current proposal would not deliver on these goals as it stands. Therefore, the interlocutor suggest a number of improvements, as follows:

On effectiveness, workability and proportionality:

- Replacing value chain with supply chain.
- Limiting the list of high-impact sectors to certain parts of sectors.
- Developing simplified reporting obligations for group 2 companies and, no later than one year after the entry into force of this proposal, provide interpretation guidelines to support them in fulfilling their obligations.
- Clarifying the definition of “appropriate measures” to allow for the prevention action plan and the following actions taken by the company to be proportionate to the significance and scale of the adverse impact.
- Clarifying fulfilment of obligations at the level of the group as groups of companies must have the option to implement the due diligence plan at group level.

On delivering a fairer level playing field:

- Applying targeted full harmonisation on essential elements (using an “internal market clause”) as it is done for example in several EU Consumer law directives.
- Adjusting turnover threshold so that it is calculated on turnover generated in the EU for both European and foreign companies.

On how to provide legal clarity:

- Shortening the list of conventions in the Annex
- Revising the definition of “business relationship” by deleting all references to “indirect”
- Publishing model contractual clauses as soon as possible to support companies (at the latest 6 months after its entry into vigour).
- Redefining “stakeholders” drawing inspiration, for example, from existing ECJ case law.

On establishing balanced enforcement and sanctions mechanisms:

- Applying sanctions only to breaches of concrete obligations, not breaches of open norms or principles.
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- Deleting turnover-based sanctions and conditionality for public support.
- Removing the civil liability provision as it stands. Civil liability in general should revolve around whether a party has directly caused or contributed to the damage or is otherwise directly associated with it.
- Clarifying the powers and means at the disposal of supervisory authorities.
- Introducing safeguards in relation to decisions from supervisory authorities, including appeal rights to the courts.
- Ensuring only directly affected parties or entities with at least a legitimate interest have the right to file substantiated complaints.

On ensuring a non-punitive approach:
- Reconsidering the use of legally imposed clauses for “termination of contract”.
- Clarifying flanking measures.
- Recognizing sectoral schemes and considering to create a presumption of conformity with the main obligations laid down in this proposal when companies implement industrial schemes.
- Granting companies’ information on supply chains (Commission acting as authoritative information point).

On how to less interfere with corporate governance models:
- Dealing with the purpose of the provisions of climate change planning in other legal acts with a different legal basis.
- Deleting remuneration of directors.
- Deleting directors’ duty of care.
- Revising directors’ duty to set up and oversee due diligence.

Negotiations on a Privacy Shield successor

State of play

On 25 March 2022, the Commission reached an agreement in principle with the United States for a new Trans-Atlantic Data Privacy Framework to replace the EU-US Privacy Shield that was invalidated by the Court of Justice in July 2020 (in its Schrems II judgment, C-311/18). Like the Privacy Shield, this new framework will take the form of a Commission adequacy decision, on the basis of which personal data could flow freely from the EU to participating companies in the US.

The agreement in principle represents an important step towards the development of a successor arrangement to the Privacy Shield. It reflects the outcome of intense negotiations led on the Commission side by Commissioner Reynders (and on the US side, by Commerce Secretary Raimondo), which were launched one year ago after the new Biden Administration entered into office. The future framework will foster transatlantic data flows and address the concerns raised by the Court of Justice in the Schrems II judgment.

In that judgment, the Court concluded that several aspects of the US legal framework in the area of national security did not meet the standard of “essential equivalence” that is required
for an adequacy finding\(^1\). To address this, the negotiations focused on (1) putting in place limitations to the collection of personal data for national security purposes that reflect the key EU law principles of necessity and proportionality and (2) ensuring that EU individuals have access to effective redress in this area.

In particular, the future arrangement will provide for:

1. A set of rules granting Europeans whose personal data are transferred to the US binding safeguards limiting access to data by US intelligence authorities to what is necessary and proportionate to protect national security; and

2. The establishment of a two-tier redress system to investigate and resolve complaints from Europeans regarding access to their data by US intelligence authorities. This will include a newly created “Data Protection Review Court”, composed of independent members from outside the US government that will be competent to hear claims against the US government and remedy violations of the law.

These are significant improvements compared to the previous Privacy Shield which – as far as government access was concerned – was essentially based on an exchange of letters describing the relevant US legal framework and where complaints from Europeans were handled by an Ombudsperson established within the US State Department.

These new safeguards and redress mechanism will complement the obligations that will apply to companies processing data transferred from the EU. As was the case under the Privacy Shield, companies established in the U.S. that will want to freely import data from the EU will have to commit to a number of binding and enforceable obligations covering key privacy principles (transparency, purpose limitation, protection of sensitive data, rights of access/correction/deletion, etc.).

Next steps

The details of this agreement in principle need now to be finalised with the US and translated into legal texts. In particular, as part of the agreement in principle, the US commitments will need to be reflected in a new Executive Order to be adopted by the US President. That Executive Order will have to be further implemented through regulations to be adopted by the US Administration (Department of Justice, intelligence agencies etc.).

Once this new Executive Order and other relevant acts will be in place, the Commission will be able to propose a draft adequacy decision and launch the adoption procedure for the final adequacy decision, which is composed of different steps.

The first formal step of the decision-making process is obtaining an opinion of the European Data Protection Board (the body bringing together the national data protection authorities of the Member States). Second, the Commission will need to obtain the green light from the Member States in the framework of the comitology procedure. Finally, the European Parliament has a right of scrutiny over adequacy decisions. We can expect that this decision will be particularly and closely scrutinized by all our institutional stakeholders and beyond.

\(^1\) The GDPR, as interpreted by the CJEU, requires that, when adopting an adequacy decision, the Commission has to assess not only the level of protection applicable to the processing of data by commercial operators in the foreign country but also the conditions and safeguards which public authorities can access data once it has been transferred to that country.
Once this procedure is complete, the Commission will be able to adopt the final adequacy decision. While it is difficult to predict the exact timeline, in light of these different procedural steps and recent precedents, we expect that the entire decision-making process (from the proposal of a draft adequacy decision to the adoption of the final decision) will take around six months. Considering that the detailed aspects of the arrangement need first to be finalised and translated into legal texts, this probably means that the adequacy decision could be adopted at the earliest around the end of this year or early next year.

Privacy developments at federal level in the US

There has been an ongoing debate on possible federal privacy rules in the US for the past years. This is largely due to increasing calls from the public for stronger privacy rules, in particular in light of scandals (e.g. Facebook/Cambridge Analytica, Equifax), as well as concerns that State laws could create a patchwork of privacy rules that would hamper business. In addition, some key commercial players (such as Microsoft, Apple and CISCO) have publicly endorsed the need for strong privacy rules and even an EU approach to privacy.

With several texts introduced and discussed in Congress (comprehensive privacy bills, as well as bills focusing on specific topics, such as the online environment, the protection of children, the use of technology in the fight against the pandemic, etc.) there appears to be some more clarity as to what federal privacy legislation could look like eventually. However, it remains an open question when this could materialise. Institutionally, any legislation will need strong bipartisan support to pass in Congress.

With a broadening consensus on the privacy principles to be covered by federal legislation, preemption and private rights of action appear to be turning into the “endgame issues.” The Republican Party is keen to introduce new legislation to replace the current patchwork of state privacy laws, but Democrats do not want to replace any state laws that may provide greater protections for consumers.

The GDPR enforcement mechanism

GDPR has established a “one-stop shop” (OSS) for cross-border processing. Controllers active in multiple Member States deal with the supervisory authority of their Member State of main establishment as their main contact point (Lead SA, Article 56(1) GDPR). Under the old Data Protection Directive, they had to deal with the data protection authorities / supervisory authorities (SAs) in each of their establishments. This is a key innovation in GDPR, intended to foster coherent enforcement and streamline the process for controllers.

Before adopting decisions with a cross-border implication, the Lead SA coordinates with the other SAs concerned through the consistency mechanism (Chapter VII GDPR). In case one or more SAs concerned raise a relevant and reasoned objection to the Lead SA’s draft decision, the EDPB can issue a binding decision ordering the Lead SA to amend its draft decision (“Article 65 decision”).

Where cases only have implications in one Member State (“local cases”), the local SA can handle them on its own (in agreement with the Lead SA, Article 56(2)-(4) GDPR).

There is an urgency procedure allowing local SAs to take interim measures with territorial applicability limited to their MS where there is an urgent need to act in order to protect the rights and freedoms of data subjects (Article 66 GDPR).

This system allocates a key role to some DPAs. Ireland is the Lead SA for e.g. Meta (Facebook, Instagram and WhatsApp), Google, Apple, TikTok, and Microsoft. Luxembourg is Lead SA for Amazon.
Some other supervisory authorities have voiced concerns about a perceived lack of enforcement action by these authorities (notably DE-Hamburg for Ireland/Twitter). Others have used their competence for enforcing the national rules transposing the e-Privacy Directive (which do not require them to go through the consistency mechanism) to impose fines for e-Privacy cookie consent violations (e.g. the French CNIL imposed a 50 Million € fine on Google).

The has developed a series of guidelines concerning the functioning of the cooperation and consistency mechanisms:

- Guidelines 02/2022 on the application of Article 60 GDPR, which address the interactions of the DPAs with each other, with the EDPB and with third parties for the handling of cross-border cases. The aim is to give guidance on the concrete application of the cooperation procedure;
- Guidelines 03/2021 on the application of Article 65(1)(a) GDPR, which clarify the application of the dispute resolution mechanism.
- Guidelines 09/2020 on relevant and reasoned objection, which clarify this concept that can be issued by Concerned DPAs in case they disagree with the Lead DPA.

On 28 April 2022 the European Data Protection Board (EDPB) adopted a statement on enforcement cooperation where it stresses its duty to ensure that the GDPR is enforced effectively and consistently. For doing so, EDPB members have agreed to further enhance cooperation on cross border cases of strategic importance, and to diversify the range of cooperation methods used, including joint investigations. In its statement, the EDPB also stresses the need to solidly embed the GDPR and DPAs in the overall regulatory architecture that is being developed for the digital market (the Data Act, Digital Markets Act, Digital Services Act, AI Act, Data Governance Act).

### Proposal on Empowering Consumers for the Green Transition

The proposal aims to ensure consumers get adequate information on products’ durability and reparability before purchasing a product. In addition, it will strengthen consumer protection against untrustworthy or false environmental claims and premature obsolescence practices. The proposal amends two existing consumer law Directives: the Consumer Rights Directive and the Unfair Commercial Practices Directive.

The Empowering Consumers for the green transition proposal was adopted on 30 March 2022 in a package along with the proposal for an Ecodesign Regulation for Sustainable Products, the EU Textiles Strategy, the Construction Products Regulation proposal, and the Ecodesign Working Plan 2022-2024. The Green Claims initiative withdrew its impact assessment from consideration by the Regulatory Scrutiny Board and will revise it, with the aim of resubmitting possibly in July. The Green Claims initiative (DG ENV) was therefore not adopted as part of the package on 30 March 2022 as originally planned and is expected later this year.

A first reading of the proposal in Council has concluded. The first four Council Working Party meetings took place on 4 April, 28 April, 19 May and 25 May under the FR presidency. Member States were generally supportive, but were keen to avoid any information overload in the provision of information to consumers. The CZ presidency has provisionally scheduled a further 6 Council WP meetings, and aims for general approach at COMPET Council in December, together with the proposal for an Ecodesign Regulation for Sustainable Products (DG’s ENV/GROW). The EP rapporteur for the proposal is MEP
Biljana Borzan (S+D/HR IMCO). JUST had a first introductory meeting with the rapporteur on 18 May. A draft report by the EP can be expected after the summer.

JUST had the opportunity to present the proposal on 17 June to BusinessEurope members active in their consumers committee and replied to the questions received. As a next step, BusinessEurope expects to finalise its position paper on the proposal by mid-July. Questions from their members concerned: relationship with other initiatives, if a ‘pre-approval system of environmental claims’ can be integrated in the Unfair Commercial Practices Directive (which would be a key concern from their side; our negative reply was reassuring them), the Commission’s planning on the development of EU reparation scores, and to what extent the new rules would need to be applied retroactively.

Package Travel Directive

Directive 2015/2302 on package travel and linked travel arrangements (‘the PTD’) is being reviewed in light of the experiences with large-scale bankruptcies and the COVID-19 crisis.

It has to be seen also in connection with the review of the passenger rights regulations, within the remit of Commissioner Vălean.

Topics that will be looked into include:

- Rules on voluntary vouchers, which currently are missing in the PTD;
- strengthening of the current insolvency protection;
- limitation of pre-payments, so as to reduce the need for insolvency protection;
- the possibility of creating a crisis fund to ensure refunds in a large crisis, while avoiding liquidity problems for businesses
- strengthening the provision on fines in case of infringements of the PTD by organisers or retailers;
- a possible simplification of the concept of linked travel arrangements (LTAs) and its delimitation from packages.

Coherence between this initiative and the parallel initiative of Commissioner Vălean on passenger rights will be very important.

In August 2021 the Commission published a roadmap on the review of the Package Travel Directive (PTD) setting out topics, first ideas and the methodology of the review.

Through various workshops and a public consultation between February and May 2022, the Commission received considerable feedback from consumers, businesses and public authorities.

There will be further surveys and targeted consultations in the context of an ongoing study.

At the end of the exercise, the Commission will present an evaluation report and an impact assessment of possible legislative changes.

If this turns out to be necessary, the Commission will adopt a proposal to amend the Directive before the summer of 2023.
General Product Safety Regulation (GPSR)

The Proposal for the GPSR repeals and replaces Directive 2001/95/EC on general product safety (GPSD) and Directive 87/357/EC on food-imitating products. The proposal is currently under discussion before the co-legislators.

The Council consumer working party concluded a first review of the articles in December 2021. The French Presidency is now trying to find an overall agreement on a compromise text. In particular discussions are focused on the possible incompatibility between the prohibition of the general monitoring obligation for online marketplaces (which is one of the main principles of the DSA) and certain obligations for online marketplaces which the FR Presidency would like to introduce. The Commission appreciates the very constructive work of the Presidency team in charge. Under its Presidency, the Czech Republic intends to launch the trilogue, and reach the final agreement on the proposal.

In Parliament (Ms Charanzová (RE/CZ) is GPSR Rapporteur in IMCO), IMCO adopted the Report on the GPSR and also the mandate for the trilogue on 16 June 2022. All compromise amendments were adopted and the Report supported by a very large majority.

Overall we consider it fairly positively (final COM line is to be defined yet). The text keeps the obligation to have a responsible person in the EU for all product and keeps the reference to health as including also mental health. It also provides the obligation of the manufacturer to notify all accident concerning its products rather than only those resulting in serious risk or actual damage as suggested in JURI Opinion.

The main IMCO amendments to Commission’s proposal concern:

- reduced scope of the precautionary principle
- reduced scope of the technical documentation (full technical documentation only required when deemed appropriate by the manufacturer with regard to the risks presented by the product)
- reduced scope of the obligations of the responsible person (“checks” only of some products, to be identified via delegated acts)
- obligation for COM to adopt specific guidelines for economic operators (SMEs in particular) on how to fulfil the obligations laid down in the Regulation
- strengthened obligations for online marketplaces, in coherence with the DSA
- introduction of the possibility for National Authorities to conclude voluntary commitments with online marketplaces and other actors regarding online sale (Memoranda of Understanding).

BusinessEurope also contributed to the Open Public Consultation on the Consumer Agenda and on the revision of the GPSD. In its feedback it insisted in particular on enforcement issues (product safety rules are not appropriately enforced, Member States’ authorities do not have enough resources, there is not enough cooperation among market surveillance authorities in the EU). BusinessEurope also suggested that market surveillance efforts to be concentrated on products that present the biggest risks to. They were not supportive of extending the responsible person in the EU to all non-harmonised products.

We have presented the GPSR proposal for BusinessEurope members in October 2021.

EU-U.S. informal dialogue on consumer protection
The informal dialogue with the **U.S. Federal Trade Commission (FTC)**, on general consumer law issues in digital markets and for the green transition, was launched on 30 March, when Commissioner Reynders met with FTC Chair Kahn and adopted a joint press statement.

The cooperation should be spread over a two-year work plan. As first activities, an International Best Practices Workshop on online reviews (co-chaired by COM and FTC) took place in May, followed by an EU-US joint-workshop to exchange on influencer marketing in June. An EU masterclass on manipulative “dark patterns” in online user interfaces where the US side will be invited and an event on green claims are planned for later this year and early next year respectively.

On the EU side, the Consumer Protection Cooperation (CPC) Network of authorities will be constantly involved.

The launch of the dialogue with the **U.S. Consumer Product Safety Commission** (CPSC) was announced on 25 April during Safety Gate media event on 25 April. It will follow a similar format and cover:

- **E-commerce** (Pending the outcome of the CPSC’s lawsuit against Amazon, the initial focus will be on issues linked to online market surveillance).
- **New technologies** (This will include both safety risks of AI-powered consumer products (e.g. virtual reality products) and/or internal use of AI by regulators for product safety purpose)
- **Globalisation of production and retail sales** (Joint training sessions for Chinese economic operators are already being organised under the EC SPEAC project)
- **Specific needs of vulnerable consumer groups** (A starting point will be a discussion on how to best tackle the risks of button batteries)

Some further possible topics were discussed by Commissioner Reynders and CPSC Chair Hoehn-Saric during their meeting in Washington D.C. on 2 June. Stakeholders will be debriefed on the progress during the International Product Safety Week on 15 November.

Another strand of this dialogue – in the field of financial services – will be engaged together with the **U.S. Consumer Financial Protection Bureau (CFPB)**. The CFPB has indicated their interest in the dialogue, and will cooperate with the FTC to do so.

The Consumer Financial Protection Bureau is a U.S. government agency that makes sure banks, lenders, and other financial companies treat consumers fairly. The Bureau produces innovative tools and resources to help consumers make informed financial decisions and build financial skills. It also publishes research and information collected about the consumer financial marketplace and creates clear rules to implement the law and preserve choices for consumers.

A meeting with CFPB and FTC to discuss topics, format, and announcement took place between services on 24 May. It was discussed that the dialogue shall have a rolling agenda and possible topics to start with are:

1. **Buy Now Pay Later (BNPL) credit schemes**, CFPB is strongly interested in BNPL, engages with other countries where BNPL is popular and would like to announce a national investigation into this credit scheme in September.
2. over-indebtedness.
The official launch date and a way of communication of the dialogue between the COM and CFPB are not yet determined.

A transatlantic stakeholder event to communicate on the progress of (all) the EU/US dialogues should take place in the first part of 2023.

**Consumer Credit Directive review**

On 30 June 2021, the Commission adopted a new proposal for a Directive on consumer credits repealing and replacing the Consumer Credit Directive. In line with the original Directive, the general goals of the new proposal are to reduce the detriment of consumers taking out loans in a changing market and to facilitate cross-border provision of consumer credit and the competitiveness of the internal market.

The Commission proposal for a Directive on consumer credits aims at modernising the EU legislation on consumer credit to respond to challenges brought by digitalisation and to take into account the impact of COVID-19 on the credit market and on consumers, including vulnerable ones.

In the Council, a general approach was adopted on the 9th June COMPET Council.

Regarding the **EP**, the appointed rapporteur in **IMCO** is Kateřina Konečná (The Left, CZ). The Report by the Rapporteur was published on Monday 7 February and aims to further increase consumer protection. **Amendments** were very numerous (800) and went in all directions, with political parties on the left side of the political spectrum being overall supportive of the proposal and adding extra layers of consumer protection while parties on the right side proposed to lower the obligations on business operators. Vote in IMCO was postponed and is now expected to take place in July.

The **opinion from ECON** was published on 28 April and it generally aims to further strengthen consumer protection.

**Distance Marketing of Financial Services**

The 2002 DMFSD established common rules for the marketing of financial services by suppliers to consumers in the EU, thus enhancing consumer protection (comprehensive information before a contract is concluded, the right of withdrawal, ban on unsolicited services and communications, appropriate sanctions, access to proper legal redress).

Since 2002, the distance marketing of consumer financial services has changed in light of the digitalisation and the commercial practices used online by providers. In parallel, the legal framework for retail financial services has evolved, including through the development of product-specific legislation (e.g. in relation to the banking sector, consumer credit, mortgages, insurance, personal pension, investment products or payment services) or horizontal legislation, thereby reducing significantly the Directive’s relevance and added value. As highlighted by the 2020 Evaluation of the Directive, it still has some value as a ‘safety net’ for products which are not covered by product-specific legislation of for new products that might come onto the market.

The Directive’s Review was included in the 2020 Commission work programme. A legislative proposal was adopted on 11 May 2022. The aim is to repeal the current directive,
but uphold its core principles on pre-contractual information and the right to withdrawal by including them in the Consumer Rights Directive.