

A joint Council of Europe - European Commission - AGE Platform Europe - ENNHRI event to mark the 10th World Elder Abuse Awareness Day

Tackling elder abuse in Europe: a renewed commitment or a missed opportunity? Policies and practices in implementing international and EU human rights instruments

15 -16 June 2015, Brussels

Panel discussion: Older people as rights-holders and consumers, Moderated by Robin Allen QC, Cloisters Chambers

The main objectives of the panel discussion are to:

- Identify examples of situations where human rights and consumer rights overlap;
- Examine the prevalence of old age inequalities in market relations;
- Critically discuss state responsibility in upholding older people's human rights in cases where older people are consumers of care-related goods and services;
- Highlight the risk of financial abuse.

ANEC speaking points by Chiara Giovannini, ANEC Senior Manager, Policy and Innovation

First of all, I would like to thank very much the meeting organisers for having invited me to participate in this high-level event, on behalf of ANEC. It is indeed a great pleasure and honour to speak about consumer protection, fundamental rights and the role of standards.

Let me briefly introduce you to ANEC, the association I work for. ANEC, the association representing consumers in standardisation, was created in 1995 by the national consumers associations and public authorities in EU member states and EFTA countries. We are supported by the European Union and EFTA Secretariat and we are very grateful to our donors. Our members contribute in kind.

ANEC's mission is to promote and defend the consumer interest, not only in European and international standardisation but also in the shaping of legislation on consumer products and services. We can in fact provide technical and policy expertise based on a network of consumer representatives across Europe. Our experts directly contribute to the work of the Technical Committees of the European Standards Bodies (CEN/CENELEC/ETSI) and International Standardisation Organisations (ISO/IEC). And we collaborate with like-minded organisations such as Age Platform Europe.

Why do we do it? Because standards, especially in Europe, are used to complement legislation and policies in general, in a co-regulatory approach. It is essential that all the interests concerned are represented in the elaboration of these standards. We will further discuss about the role of standardisation, with some of you perhaps holding the view that standardisation is a form of industry self-regulation. Let's see.

How far do you use the human rights framework to address consumers' issues in standardisation, in particular in access to health and social care services?

On 15 March, 1962, US President John F. Kennedy delivered an historic address to the US Congress in which he outlined his vision of consumer rights¹. This was the first time any politician had formerly set out such principles. Over time, the consumer movement has developed this vision into a set of eight basic consumer rights as follows:

- The right to satisfaction of basic needs
- The right to safety
- The right to be informed
- The right to choose
- The right to be heard
- The right to redress
- The right to consumer education
- The right to a healthy environment

I would like to focus on the first two rights, basic needs and safety, and explore their links with the provisions of the European Charter of Fundamental Rights on consumer protection (article 38), human dignity (article 1), rights of the elderly (article 25) and protection of personal data (article 8)².

Discrimination exists if consumers cannot access products and services because of their ages and abilities. ANEC thinks that technical standards (not to be confused with "human rights standards") can be used to foster accessibility, complementing legislation. This is because standards determine the manner in which a product or a service is designed or provided, before it is placed on the market. And this is why we work on the protection of vulnerable consumers. New trends and

¹ <http://www.consumersinternational.org/who-we-are/consumer-rights/>

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>

approaches in ethics, such as the concept of value-sensitive design, allow products to be designed that anticipate the safety needs of vulnerable consumers (e.g. "safety by design"), in circumstances where vulnerabilities prevent the tool of consumer information to play its usual role. A person who is 'vulnerable' is capable of being easily or quickly harmed or injured, as vulnerability implies an association with the concept of risk³. The concept of "consumer vulnerability" is also dependent on the specific external circumstances in which consumers act and operate, such as economic and financial conditions or social disadvantages.

Considering that the aim of European safety legislation is to "ensure a high level of consumer protection"⁴ regardless of age or ability, ANEC finds it unacceptable that standards implementing safety legislation exclude the use of electrical household appliances by vulnerable consumers. For many years, we have been concerned at limited scope of the EN 60335 series of standards, implementing the Low Voltage Directive on the safety of household appliances⁵.

This is not only discriminatory, but also not in line with present market and social trends and realities. The level of use of domestic appliances by older people depends on the household composition. People living alone are more likely to continue using these products than those living with other people, where help is likely to be more readily available. However, the majority of older people wish to continue to live in their own homes for as long as possible, but many appliances are not designed to meet their changing needs as they age.

This is why we have fought for the deletion of the exclusion clause⁶. Indeed, we have been successful in revising the following standards to take into account the safety of children, older people and people with disabilities: EN 60335-2-2 (vacuum cleaners), 2-3 (electric irons), 2-6 (cooking ranges, hobs, ovens), 2-7 (washing machines), 2-23 (appliances for skin or hair care), 2-52 (oral hygiene appliances). All were adopted as European Standards in April 2010.

In 2013, we drafted⁷, together with BECU, the European Consumer Voice, an opinion on consumers and vulnerabilities adopted by the European Consumers

³ This risk-based definition is adopted in the Report of the Expert Workshop on Ways and Means to Enhance Social Protection and Reduce Vulnerability, United Nations Commission for Social Development, November 1997 (E/CN.5/1998/5) p. 4.

⁴ Article 169, Title XV - Consumer protection, Article 114, Chapter 3 - Approximation of laws, Treaty on the Functioning of the European Union, 2009

⁵ DIRECTIVE 2006/95/EC

⁶ Scope of EN 60335 states that it does not "In general, take into account persons (including children) whose physical, sensory or mental capabilities; or lack of experience and knowledge prevents them from using the appliance safely without supervision or instruction".

⁷ ANEC Position Paper "How to protect vulnerable consumers?", ANEC-CHILD-2011-G-111/ANEC-DFA-2011-G-071 - December 2011

Consultative group, to advise the European Institutions on how to tackle consumers' vulnerabilities⁸. And in 2014 we obtained that the new Low Voltage Directive explicitly mentions that "harmonised standards relevant to this Directive should also take into account the United Nations Convention on the Rights of Persons with Disabilities" (recital 18)⁹.

Are there current standardisation processes which aim to raise quality of care for older people? What do you think of the idea of an EU standard for quality care services, which would be based on the human rights framework?

In 2013, ANEC commissioned a study that look at the work of CEN/TC 385 PC, in developing CEN/TS 16118 "Sheltered housing - Requirements for services for older people provided in a sheltered housing scheme"¹⁰. This was CEN's first ever attempt to develop a standard in the social welfare field. It became clear during the progress of the work that there is a diversity of models of accommodation and care for older people across Europe that must be taken into account in future standards development.

CEN/TC 385 PC decided in June 2011 to publish a Technical Specification instead of a (full) European Standard (EN) as no consensus could be reached on the submission of the standard to Formal Vote in early 2011. The main problems were divergent existing national requirements. Considering the potential added value for users of sheltered housing, ANEC did agree to the change of deliverable, published in March 2012.

Nevertheless, ANEC believed more background information was needed about the existing national requirements on sheltered housing in order to improve the focus of future work on standardisation in relation to accommodation and care for older people. Our research revealed patterns divided among Northern Europe, the Southern Mediterranean and Eastern Europe. The lack of information on standards in some Eastern European countries reflects the low level of development of specialised care facilities for older people in Eastern Europe. In Northern European countries, such as Austria, Germany, Finland, Ireland and the UK, the study reveals a range of models of supported housing and residential care options, together with evidence of standards and regulations for the premises and quality of care.

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http://ec.europa.eu/consumers/archive/empowerment/docs/eccg_opinion_consumers_vulnerability_022013_en.pdf

⁹ http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_096_R_0357_01&from=EN

¹⁰ <http://goo.gl/LxTqpm>

Due to differences in the way sheltered housing and healthcare services are regulated across Europe, there is a risk that standards fail to set common requirements which would be applicable in all countries. However, ANEC believes the requirements given in standards on sheltered housing and healthcare services must not be lowered, so as to ensure consumers are provided with a high level of protection.

Although respecting the different national approaches to care of the elderly, standards should reflect clear safety and quality principles that must be applied. Too broad a scope or too weak requirements would allow the less professional service providers to profit at the expense of consumers. And, because service safety begins with well-trained, skilled and qualified personnel, special awareness training for service providers must be a basic requirement of any standard on care¹¹.

Another relevant standardisation activity is about Service Chain for Social Care Alarms (CEN TC 431 "Service Chain for Social Care Alarms"). In the context of an ageing population and increasing demand for social care services in Europe, social care alarms can enable people to live longer in their own homes, contribute to independent living, and limit the costs of elderly care. However, there is a growing concern about the performance of popular social care alarms based on non-sustainable analogue tone signalling technology. The imminent technology shift into IP (Internet Protocol) implies new investments in systems for social care alarms in the coming years. For ANEC, it is essential for the work to have a strong focus on consumers, aiming to give them an improved level of quality of life by enabling them to stay longer in their own homes, to remain independent and be able to participate in society. It is also essential to ensure adequate personal data protection.

The fundamental right of personal data protection is guiding our work in the standardisation of all new technologies and especially when vulnerable consumers interact with such technologies. The use of cameras and other surveillance technologies in care settings is increasingly used to detect cases of abuse. More recent technological developments mean, furthermore, that there are increasing opportunities for these (whether by use of cameras, audio-recording or movement monitoring technologies) to be used in care homes as both a deterrent and an 'independent witness' to any abuse.

Much of the abuse that takes place is hidden and may relate to very personal activities or relationships. But how do we maintain confidentiality? And what if the surveillance system is perceived as abusive? An ethical way forward is needed for

¹¹ ANEC Position Paper How standardisation can support the silver economy (ANEC-DFA-2014-G-021- June 2014).

the use of such technologies and for the way that the gathering of visual or audio information can be legitimised¹².

Could standards help? Yes but not instead of firm enforcement of the legal framework.

Conclusions

In the twenty years its existence, the activities of ANEC have striven to influence standards to be as inclusive as possible while contributing to the setting of legal bases that do not take into account the needs of only mainstream consumers.

Without consumer representation in the writing of standards, products will not be as safe, as interoperable, as accessible or as sustainable as they could be. Once again, it is not the interests of business to ignore the needs of consumers if it wants to sell its products and services, but our experience is that business focuses on meeting the needs of the “average consumer”, where costs are lowest and profits highest, to the exclusion of those who are old or disabled. If and when standards are used for public policy objectives, they need to take into account the needs of all consumers.

Thank you very much for your attention!

Chiara Giovannini holds a master degree in European Law. Since 2002, she is Senior Manager, responsible for horizontal policy issues as well as the sectors of Design for All (Accessibility), Innovation and Information Society, including information and communications technologies (ICT). She represents ANEC in several European Commission Committees and Expert Groups (ECCG, TCAM, MSP) and CEN/CENELEC/ETSI Committees and Working Groups.

ANEC in Brief

ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment as well as related legislation and public policies. ANEC was established in 1995 as an international non-profit association under Belgian law and represents consumer organisations from 32 countries. ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.

www.anec.eu

¹² <http://www.emeraldinsight.com/doi/abs/10.1108/WWOP-11-2014-0037>; Fisk MJ “Surveillance Technologies in Care Homes: Seven Principles for their Use” publication forthcoming in Working with Older People 2015.