

Ministry of Education and Science of Ukraine
West Ukrainian National University
Faculty of Law
Department of International Law and Migration Policy

INTERDISCIPLINARY COURSE WORK

on the topic:

Peculiarities of the legal status of the consumer in the European Union
and in certain European countries

Prepared by:
Student of group МІІма-31
Aweniya Zainab Olayinka
Checked by:
Assoc. Prof. N. Martsenko

Ternopil, 2023

CONTENT

I. INTRODUCTION

II. THE NOTION OF CONSUMER IN EU LAW

III. LEGAL PERSONS AS CONSUMERS

IV. EUROPEAN COMMISSION CONSUMER RIGHT

DIRECTIVE

V. EUROPEAN CONSUMER POLICY AND REGULATION

VI. EUROPEAN CONSUMER POLICY AND REGULATION IN

CONTRAST TO THE UNITED KINGDOM

VII. CONSUMER PROTECTION

VIII. CONCLUSION

I. INTRODUCTION

Legal status is the position held by something or someone with regard to law. The European Union has legal personality and as such its own legal order which is separate from international law. Furthermore, EU law has direct or indirect effect on the laws of its Member States and becomes part of the legal system of each Member State. The European Union is in itself a source of law.

The Consumer Rights Directive gives consumers the same strong rights across the EU. It aligns and harmonizes national consumer rules, for example on the information consumers need to be given before they purchase goods, services or digital content, and on their right to cancel online purchases, wherever they shop in the EU.

Accordingly, a consumer is a natural person, who is acting outside the scope of an economic activity (trade, business, craft, and liberal profession). The definition is a negative one, i.e. it requires that a consumer act outside the scope of a business. The directives diverge in the definition of economic activity; in particular some include 'craft', while others do not. A more far-reaching exception is to be found in the Package Travel Directive which uses a broad notion of 'consumer', extending it to include companies and business travelers (as purchasers and users of travel services).

The legal systems of the MS vary to a great extent as regards the scope of the notion of 'consumer'. The vast majority of MS have one, overarching

definition which applies across consumer law (e.g. Austria, Germany, Poland). Some have a couple of definitions, depending on the context. There are also MS where the notion is defined separately in each transposing act. Finally, in France the notion of consumer is not defined at all, and it is left up to the courts to decide whether under given circumstances someone should be considered a consumer.

The Commission has taken initial steps to adapt the interpretation of the key Directives through updated guidance documents (or Notices) on the Unfair Commercial Practices Directive (UCPD), the Consumer Rights Directive (CRD), the Unfair Contract Terms Directive (UCTD) and the Price Indication Directive (PID), following the adoption of the so-called “Omnibus Directive”.

On 30 March, the Commission attempted to bring the EU consumer acquis closer to its sustainability goals by presenting its proposal for a Directive on empowering consumers in the Green Transition. To spur consumers’ environmental awareness and ban “green washing and planned obsolescence”, the initiative lays down new unfair commercial practices, such as misleading or vague environmental claims, which are likely to be prohibited. Information requirements on a product’s durability and reparability are also due to be strengthened.

II. THE NOTION OF CONSUMER IN EU LAW

In EU law, the notion of 'consumer' is of crucial importance not only in the growing consumer acquis but also in EU private international law, in particular in the Rome I and Brussels Regulations, which include specific rules for consumer protection.

Furthermore, the Commission's proposal for a Common European Sales Law (CESL) includes a subset of rules applicable to consumer transactions. Each EU instrument defines 'consumer' for its own purposes. Although those definitions essentially converge, there are nonetheless some differences. This has prompted the Commission to emphasize that a consistent and uniform definition would help delimit the scope of the consumer acquis more accurately.

Furthermore, owing to the minimum (as opposed to full) harmonization character of the bulk of the consumer acquis, many Member States (MS) extend the personal scope of their consumer protection law beyond the definition of 'consumer' in EU law. The notion of consumer stems from economics and sociology. Nevertheless, it has developed an autonomous meaning in the legal domain, having become the factor triggering the application of a distinct set of rules, known collectively as 'consumer protection law'.

In German case law, the notion of consumer has also been extended to employees (but not self-employed persons). They can rely on the national rules

transposing the Unfair Terms Directive to request a court to review the standard terms of their labor contract.

There is no consistent and uniform definition of consumer in EU law and there are also divergences amongst the Member States, partly as a result of transposing EU directives into national legislation. In the current EU consumer acquis each EU instrument defines the notion of consumer separately for its own purposes. Those definitions essentially converge, but some differences exist. The notion of consumer has been defined in several directives in the area of contract law, as well as in the regulation Brussels I5 and Rome I6 (in the area of procedural law), which include specific rules for consumer protection.

A majority of current EU directives define the consumer as a 'natural person who is acting for the purposes which are outside his trade, business and profession'. The definition is therefore a negative one. The directives also diverge in the definition of economic activity, some also including a 'craft'.

The notion of consumer in EU law does not apply to legal persons, even if they have a non-business character, as would be the case for non-profit associations. This has also been emphasized in the case law of the Court of Justice on several occasions. There is an exception, namely the Package Travel Directive 90/314/EEC, which uses a broader notion of the consumer by including companies and business travelers as purchasers and users of travel services.

Mixed transactions

A particularly controversial area is so-called mixed transactions which a person concludes for both a personal and professional purpose. This occurs especially in the case of self-employed persons who buy dual-use objects such as a computer or car. There are four possible approaches to mixed transactions.

They either: never count as consumer transactions, or count as consumer transactions if the personal purpose prevails, or count as consumer transactions if the business purpose is marginal, or always count as consumer transactions. Most of the consumer acquis does not explicitly address the issue of mixed transactions. The exceptions include the Product Liability Directive, which applies to defective products used 'mainly' for private purposes and the preamble to the Consumer Rights Directive which indicates that if the trade purpose 'is so limited as not to be predominant in the overall context', a dual-purpose transaction should count as a consumer contract.

Initially, the Court of Justice held that even a minor connection with a person's professional activity excludes the transaction from the scope of the Doorstep Selling Directive's consumer protection rules. Later the Court ruled that if the business purpose of the transaction was negligible in the overall context of the supply, the person could rely on consumer protection rules. However, it stressed that the predominance of the private element is by itself irrelevant. According to the same ruling, a person cannot claim the status of consumer if they have negligently created the impression that they were acting in the course of a business (e.g. by using a company letterhead or address).

National laws

The majority of MS do not have any explicit rules on mixed transactions. However, some countries treat them as consumer contracts if the personal purpose prevails (Germany, Nordic countries) or if the link to a business activity is only 'indirect' (Poland). Austrian and Belgian laws, on the other hand, explicitly exclude mixed transactions from the scope of consumer contract law entirely.

III. LEGAL PERSONS AS CONSUMERS

a. EU law

Under EU law, the notion of consumer does not extend to legal persons, even if they have a non-business character (e.g. non-profit associations). The Court of Justice has consistently held that EU definitions of consumer must not be given a wider interpretation. This does not preclude MS from adopting wider definitions in national legislation in areas covered by minimum harmonization.

b. National laws

It is argued that some legal persons, such as associations, owing to their lack of bargaining power and experience, should be treated as consumers. This has prompted a number of MS to include legal persons in the definition of 'consumer', if they are either acquiring goods or services for private use (e.g. Austria, Czech Republic) or act as final users (e.g. Greece, Spain). In France, a parallel notion of 'non-professional' is used to grant consumer protection to legal persons in certain cases.

c. SMEs as consumers

Under EU law small and medium-sized enterprises (SMEs) are never treated as consumers, even in the case of self-employed traders or family businesses. However, some MS extend consumer protection rules to cover them too. For instance, in the Netherlands small enterprises (up to 49 employees) may

rely on certain rules on unfair terms in contracts on an equal footing with consumers.

In France, courts grant consumer protection to sole traders, provided that the contract in question does not directly relate to the trader's business activity. In the UK, companies may rely on consumer protection against unfair terms if they purchase goods of a type they do not ordinarily deal with.

The Directive 2011/83/EU on Consumer Rights (Hereinafter the directive) came into force in 2011 after a long drafting period. The Act on Consumer Protection no. 6502 (Hereinafter, TCPA) that came into force in Turkey on 07.11.2013 resembles the Directive on Consumer Rights. The TCPA changed some of the main points of consumer law in Turkey. However, when the Turkish Grand National Assembly was harmonizing the new act with the Directive, even though to the principle of full compliance, they expanded the definition of “consumer”. This blog post summarizes the main difference in this definition and some of its consequences on daily life.

According to the definition provided for in article 2 of the Directive, a consumer is “...any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession”. However, in article 3(k) of TCPA natural or legal persons who act for purposes outside his/her trade, business, craft, or profession are qualified as consumers.[1] For consumers who are natural persons, Turkish consumer law is in line with EU law. However, the striking difference in the definition of

“consumer” between the EU consumer law and Turkish consumer law is that while only natural persons are considered as consumers in EU law, legal persons can also be consumers in Turkish consumer law under some circumstances.

This leads to legal persons who do not aim for commercial and business transactions to benefit from consumer rights. In other words, each legal person who obtains goods and services for his/her special/private needs and purposes without seeking profit and commercial purposes is considered a consumer in Turkish law.

In cases where it is difficult for the seller/supplier to determine whether the other party of the contract is a consumer or not, the Turkish Court of Cassation states the nature of the contract should be determined by looking at the conditions at the time of the conclusion of the contract. It also states that the “business associations” (i.e. general partnership, limited partnership, company, cooperatives, etc.) can also be considered as consumers.

However, the business association should clearly state to the other party that it is using the good or service for consumption purposes at the time the contract is concluded, or this situation should be clearly understandable by the counterparty.

What happens if a legal person uses the goods or services with a mixed purpose? The Turkish Court of Cassation states that if the goods and services are used for both private and commercial purposes by the legal person, they

cannot benefit from consumer rights, moreover, they are not considered as consumers.

As a matter of fact, the Court of Cassation has stated in one of its decisions that a commercial partnership that purchased a vehicle in its own name and used this vehicle in the business and sometimes in a private manner cannot be qualified as a consumer. The private purpose shall be pure without any business purpose and shall be used for non-commercial purposes.

In the light of these explanations, Turkish law departs from the scope of application of the Directive in terms of legal persons. Therefore, although the principle of full compliance is violated at this point, there is a deviation in Turkish consumer law from EU law in favor of the consumer. I consider it as a positive step in consumer law.

IV. EUROPEAN COMMISSION CONSUMER RIGHT DIRECTIVE

The Consumer Rights Directive gives consumers the same strong rights across the EU. It aligns and harmonizes national consumer rules, for example on the information consumers need to be given before they purchase goods, services or digital content, and on their right to cancel online purchases, wherever they shop in the EU.

The directive applies to all contracts concluded between a "consumer" and a "trader". Member States may not diverge from the directive by imposing more or less stringent provisions unless a specific possibility to deviate from its rules is provided in the directive itself.

DIRECTIVE 2011/83/EU

This directive was been published on November 22, 2011, entered into force on December 12, 2011 and should have been implemented in national regulation on December 13, 2013 at the latest.

Its official title, Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance.

It seeks to increase consumer protection by harmonising several key aspects of national legislation on contracts between customers and sellers.

It encourages trade between EU countries, particularly for consumers buying online.

Other than some exceptions such as package travel and holidays or financial services, such as consumer credit and insurance, this directive covers contracts between traders and consumers on the sale of goods, services (such as the supply of water, gas, electricity and heating), and online digital content.

It replaces the distance selling directive (97/7/EC) and the doorstep selling directive (85/577/EEC).

Rules on digital content

The Directive lays down specific precontractual information requirements for digital content and rules on the withdrawal from contracts for digital content that is not supplied on a tangible medium.

These provisions are especially relevant in pursuing the objectives of the Digital Single Market strategy. Digital content is defined as ‘data which are produced and supplied in digital form’ (Article 2(11) CRD).

Whilst the Commission confirms the interpretation provided in the CRD Guidance, difficulties may indeed exist to distinguish in practice between digital content contracts and contracts concerning online services whose main object is the supply of a service rather than the digital content itself; the latter fall within

the scope of the Directive as "services contract" only when supplied against payment of a price.

RIGHT OF WITHDRAWAL

Consumers can withdraw from distance and off-premises contracts within 14 days of the goods' delivery or conclusion of the service contract, subject to certain exceptions, without any explanation or cost.

A standard withdrawal form provided by the seller suffices. If the consumer is not made aware of their rights, the withdrawal period is extended by 12 months.

Exemptions apply for rapidly perishable goods, sealed goods opened by the consumer which cannot be returned for health or hygiene reasons, and hotel reservations or car rentals which are tied to specific dates.

Transposition and implementation

Article 28 of the Directive required Member States to adopt and publish national measures transposing the Directive by 13 December 2013, with a view to applying these measures from 13 June 2014.

From October 2012 to April 2014 the Commission organized five transposition workshops to assist Member States. Nevertheless, 17 Member States⁹ were late with their transposition and the Directive became applicable in all 28 Member States only from the end of 2014.

Member States chose different transposition techniques: some Member States transposed the CRD by incorporating it into existing laws (for example

their civil codes), others adopted a new piece of legislation transposing the CRD almost verbatim, and some chose a combination of the two.

V. EUROPEAN CONSUMER POLICY AND REGULATION

The consumer protection policy refers to the stipulated mechanism which gives the consumer the freedom to shop and enjoy various products within their establishments. For instance, the European Union (EU) policy and regulation offers freedom to customers or consumers linked to the European Community to operate freely and shop anywhere and to enjoy protection and price advantage and the supply of quality goods to them.

Vulnerable consumers refer to those that are exposed to unfair pricing systems, low quality products, limited consumer rights, inadequate access to information and the repression of speech. Vulnerable consumers may include normal buyers, organizations or individuals who are exposed to unfair consumer practices from the supplier, dealers, government or the representative unions.

According to the Consumer Protection Strategy of 2007 to 2013, the primary role of consumer protection is to enhance equal classes of protection and security within the EU. It also facilitates a rich integrated domestic market.

According to the EU, the objective of a good customer protection approach includes the ability to empower the consumer through the creation of a transparent market which can supply the consumer with a wide spectrum of options in terms of quality of prices of commodities. It is also the objective of the policy to safeguard the consumer from all risks and threats.

The Consumer Policy Strategy focuses on different priority areas that include favorable consumer protection policy, fair oversight of consumer market and state consumer policies, facilitating consumer policy through the establishment of market regulation tools and placing of customers at the helm of other EU policies.

The strategic policy is expected to inform and educate the consumers through integration of the practices of the EU centers. The UK, a member of the EU is bound by the directive of the domestic UK law.

The consumer protection claims are handled when the complaints are forwarded to the director general who deals with fair trade. It is however not easy for consumers to complain straight to the OFT1 and they have to employ a middleman. This study evaluates the European and UK policies of consumer protection. The essay will focus on the impact of fair, favorable or unfavorable policies on the consumers.

VI. EUROPEAN CONSUMER POLICY AND REGULATION IN CONTRAST TO THE UNITED KINGDOM

a. EU's assistance to the vulnerable consumers

The European Policy and Regulation integrates a number of clauses and acts that are expected to be implemented and applied by all stakeholders. It is however noted that despite the acts and clauses, the EU has managed to produce little, or at a given point, no assistance to the vulnerable consumers. The commission's council has also done little to observe consumers' protection regulations.

The Green Paper has been termed as 'just any other publication'. Not many producers, manufacturers or suppliers are ready to comply with the clause. Certain manufacturers view the publication as a framework for developing top level consumer protection. The EU which is comprised of many member states experiences difficulty in running the policies because of the big number of its members.

Based on the members, the fair monitoring of markets and national consumer policies becomes a challenge, with unfair representation of commissioners and representatives. Many issues emerge and the consumers' interests tend to diverge from the original intentions.

The provision of better education to consumers is one of the many policies that the EU tends to maintain but due to ignorance and little

information; consumers become vulnerable due to lack of enough information. Health is important for all consumers and especially among the weak and malnourished ones. The European policy and regulation on consumer protection is mandated to maintain health and safety standards.

When it comes to work policies, construction workers tend to fear the medical cover because the policy and regulation does not include compensation especially if the accident is beyond the job scope. This fact delays the response awaited by the consumer.

The profiles of climatic action, energy and environment are sometimes a challenge and unfair to vulnerable consumers who may include the normal citizens, government members and non-governmental agents.

The provision on age and medical background of consumers in respect to drug and substance abuse has always been promoted in Europe with the set standards and regulations protecting consumers from exploitation and abuse. The commission in charge of safety creates awareness in social and public settings for individuals who are ready to be informed.

The youths are the most affected when it comes to drug and substance abuse with rising cases of addiction and crime. Suicide has also being linked to drug abuse or overdose.

UK's assistance to the vulnerable consumers

The UK's regulatory policy makes her a stronghold when it comes to consumer protection. The clause on fair trade allows individuals from England,

Wales and other parts of UK to enjoy fair trade. Fair trade refers to a good pricing system, fair competition and market procedure. This act tends to empower the weak and depressed consumers as it gives them hope of justice and fairness.

The policies are able to outline what is unfair and inform the consumers on the current market structures. The product safety regulation clause protects consumers, general public and various stakeholders from using harmful products and services. For example the Tobacco Awareness Scheme is aimed at informing individuals with little or no information on tobacco and narcotics about the dangers of using drugs.

Customers or consumers benefit directly or indirectly from this clause. They benefit directly through information availability and indirectly through third parties. The financial regulation clause helps the less informed consumers and general public on financial services. The policy helps individuals to recognize the need for accessing realistic loans and credit facilities.

It is the mandate of the Consumer Protection Commission and Agency to facilitate fair monetary organizations and authentic signatories. Two types of consumers are found in the UK. They include those consumers who seek financial advice from established individuals and successive personalities and those who play the 'try and error' technique. They latter operate by chance.

To them, financial gain is based on luck and previous experience. The consumer policy and regulation tends to address the needs of these consumers

by creating educational programs in media and social communication networks like Face book⁷ and Tweeter⁸.The clause on competition policy and regulation within the private quarters helps in controlling cartels and fighting monopoly.

Monopoly has been a menace to the common consumers who have been subdued by the cartels in favor of certain individuals. They help in abolishing mergers that appear unfair and improperly constituted. The consumers are able to enjoy commodities The Consumer Policy and Regulation protects consumers from the freedom from monopoly and egocentric individuals.

The role played by the OFT has been a crucial one in solving consumers' complaints through legal means. The OFT is able to speak for the weak, irresponsible and vulnerable consumers. The movement of the complaints from the OFT to the trading standards helps the organization to conduct comprehensive investigations.

The proximity focus by the OFT is to maintain links with its consumers through formation of small groups that act as a representatives of the consumer cycle. The groups are able to convey the complaints to the OFT. The OFT's nature of not prosecuting companies has been able to encourage different companies to solve their issues and consumer complaints amicably and responsibly.

Consumers are safeguarded from fear of facing prosecution; especially if it is a scheme that undermines the Consumer Regulation and Policy. The OFT

“watchdog’s” role has helped the UK community to understand the importance of a better consumers’ regulation and policy.

The freedom that the Enterprise Act of 2002 offers consumer bodies to be structured as super complainants allows the consumer to maintain the proximity of contact between the consumers and the OFT. The Citizen Advice Bureau provides free information and advice to vulnerable consumers who encounter problems in accessing important policy information especially when assessing costs.

Certain consumers find it difficult to file their complaints because they cannot afford advocacy fees. The Water Voice or Consumer Water Council helps the consumer in accessing safe, pathogen free and clean water. Safe water benefits vulnerable consumers in sewage polluted areas, poor drained areas and areas experiencing underground leakages.

The good garage and auto mobile repair schemes have helped consumers in accessing better automobile services. People who do not have enough information on car servicing and maintenance, cost of purchase and repair can depend on the scheme for direction.

Recent invention in automobiles has been re-coded and appreciated as the consumers are availed with important information to earn their desired vehicles based on their willingness to buy and access the services. The policy assures the consumer of an efficient delivery system, resource policy and legislative

measure. The Sale of Goods Act of 1979 facilitates efficiency of sales to the targeted consumer.

The act assures vulnerable consumers of the right sales. The act connects the consumer with producers thus enabling an effective network of business. Consumers who are usually exposed to diverse challenges on the kind of products or services to go for are offered a variety of options by the policy. The Unfair Contract Act of 1977 is a practical clause for the vulnerable and less experienced consumers.

The act teaches them about the importance of fair trade and competition. The principle of regulation engages the act in working to motivate rational regulation and industrial evaluation while maintaining safety of the consumers. The UK's policy generates economic momentum by prioritizing the consumer.

The consumer becomes the subject matter and point of interest of the market. The merger inscription ensures that consumers' issues are incorporated in competition and merger enquiries. Alongside the super complaints docket, the merger works to check on market failure and opportunity cost.

UK's policy and regulation on consumer protection

The UK being a part of the EU is legally bound by the policies of the EU. The intervention of the EU law, the UK policy and regulations are emerging to be independent entities with different procedures and regulations to safeguard the consumers.

The UK tends to recognize the different areas that the EU has attempted to enforce the policy but failed and the UK has in the past made attempts to resuscitate it. In the different circumstances, especially where domestic laws are crucial, matters concerning consumer protection are usually evaluated and involve contract restitution tools or criminal laws.

The issues pertaining to consumers are configured and evaluated as complaints are forwarded to the general director in charge of air trade. Direct complaints from the consumer to the OFT are not allowed. An intermediary has to relay the complaint to the OFT. The intermediary provides legal information and advice to the respective complainant.

He can also decide to take the complaints to the trading standard for further evaluation. Following the restriction placed on the Enterprise Act 2012, uncollected complainants face the challenge of not knowing whether their complaints will be considered or not. This aspect becomes difficult for the individual consumers who are unable to access the outcome of their complaints.

The consumer can in certain circumstances forward large volumes of complaints to be evaluated systemically. The OFT is reported to be lenient and rarely takes companies to court but prefers “slim” touch regulation policies. The consumers’ complaints raised against the organization or company do not go through publication but pass through investigative work.

Certain consumer protection laws like the unfair stipulation of the Consumer Contract Regulation of 1999 or Distance Selling Regulation of 2000

were directives derived from the UK implementation. The OFT becomes responsible for enforcing this regulation.

However, these policies can lead to a problem considering that the legalization tackles individual's complaints and ignores systemic complaints from them. The OFT plays the role of the UK's official "watchdog" in respect to competition and consumer insights. It oversees the operations of the market at the local and international level through trading standards offices.

General advice on consumer operation can be drawn from the consumer docket or through the Citizens' Advice Bureau Brand. The UK Policy and Regulation integrates several acts and clauses.

They include Sales of Good Act 1979, Unfair Contract Terms Act of 1977, Consumer Protection Act of 1987, Electronic Consumer Regulation of 2005, Consumer Protection Regulation of 2000, The Enterprise Act of 2002, Consumer Protection from Unfair Trading Regulation of 2008 and General Product Safety Regulation of 2005.

These acts have existed for a long time and have maintained the UK's dominance within the European community. These policies on consumer protection have affected many acts of parliament, government departments, statutory instruments' lobby groups and citizens with the goal of facilitating a market economy that is fair. The policies ensure that consumers enjoy quality and safe goods and services.

The primary zones of regulating consumer matters include the product safety evaluation that protects people from buying potentially harmful goods. It ensures favorable terms for goods and services by elimination of unfair terms. It also includes financial regulation to facilitate credit access by ensuring that it is affordable.

The zone also requires that consumers fully understand the terms and obligations attached to loans and credit facilities. The other zone deals with strong competition especially from the private sector by elimination of cartels, destroying monopolies and dissolution of mergers.

Even though the UK is a part of the EU's internal market, it works alongside other countries from Europe and EU institutions by outlining and enforcing transitional policies. A lot of parties play different roles in the maintenance of the policies with respect to the established laws. Examples of them include the Bank of England, OFT, Financial Services Authority, Competition Commission and the European Commission.

The Consumer Advocacy Group is a crucial organization that maintains justice and transparency with respect to the consumers' protection policies. The supposed super-complainant aims at empowering the consumer's concerns. The consumers in this case become vulnerable by not having individual access to vital information. The information can form a basis of evaluating the market.

Eight types of advocacy groups have been structured since the year 2007 and they include CAMRA which is a lobbying cluster that deals with quality

and nature of beer and the Citizens Advice Bureau which provides free legal advice and specific help on consumers' rights in the UK.

Others include Water Voice, Consumer Direct, Post Watch and General Consumer Council of Northern Ireland, Good Garage Scheme and the National Consumer Council. The Consumer Association has tangible authority of taking action as envisaged by the Completion Act of 1988. The association is a lobby assembly and is sponsored by subscription of regular consumers.

The street fundraising initiative that originates from charity mergers is usually an offensive and aggressive move that violates legislation and policies outlined by regulating agencies. Different acts facilitate different clauses and fields. For product safety, the Consumer Protection Act facilitates safety of both goods and services.

For finance and credit, the Consumer Credit Act of 1974, Financial Services Act of 2010, Financial Services and Market Act of 2010 and financial ombudsmen services facilitate monitoring policies. The Competition Act of 1998 and Enterprise Act of 2002 generate healthy and fair competition and practices.

Draft Common Frame of Reference

Under the Draft Common Frame of Reference (DCFR), a mixed transaction is covered by consumer protection rules if it is concluded 'primarily' for non-professional purposes. Furthermore, if the same contracting party can be

treated both as a trader and as a consumer, they may rely on the consumer protection rules vis-à-vis the other party who is a trader.

However, this approach has not as yet been implemented in any binding EU instrument.

Business start-up activities

The consumer acquis does not directly address the issue of transactions concluded by a person who is not yet conducting an economic activity, but is planning to do so. According to the Court of Justice, such a person does not enjoy consumer protection under EU private international law. However, the Directive on distance marketing of financial services explicitly acknowledges that MS may treat such persons as consumers. Austria has regulated this issue explicitly, including natural persons who are starting up a business in the definition of consumer.

VII. CONSUMER PROTECTION

With the adoption of the Single European Act and the emergence of the concept of Citizens' Europe, concerns such as the environment, health and consumer protection were enshrined in the Treaty of Rome, alongside the priority of freedom of movement.

The EU Treaty marked a new departure with the introduction of a specific article on consumers into the EC Treaty (Article 129a, now renumbered Article 153). More recently, the "mad cow" crisis has led to calls for stronger action by the European Union to protect consumers and better consumer information.

The Treaty of Amsterdam attempts to meet these expectations and to respond more effectively, and so the wording of Article 153 (ex Article 129a) of the EC Treaty has been altered. The provisions on consumers have been improved, clarifying the Community's objectives and linking them more closely with the other policies.

THE BACKGROUND

Initially the Treaty of Rome contained no formal legal basis for consumer protection. But long before the formal adoption of former Article 129a, the Community began to concern itself with this issue. An example is the 1979 Directive on consumer protection as regards food price labelling, which was based on Article 235 (now Article 308) of the EC Treaty, and the Directives on misleading advertising (1984) and the protection of consumers in the case of contracts negotiated away from business premises (1985), based on Article 100 (now Article 94) of that Treaty.

Since the advent of Single European Act and the introduction of Article 100a (now Article 95) into the EC Treaty, the Commission's proposals on the approximation of laws affecting the internal market must be based on a high level of consumer protection. A certain number of texts have been based on this Article, notably the Directives on package travel, package holidays and package tours (1990) and unfair terms in consumer contracts (1993). A further impetus was given by the Inter-Governmental Conference preceding the adoption of the Treaty on European Union, with the introduction of a specific title on consumer protection into the EC Treaty.

Since then the Community has redoubled its efforts to ensure a high level of consumer protection. The Community has endeavored to protect the health and economic interests of consumers through a range of specific measures.

Examples include the Directive on price labelling of products offered to consumers (the first Directive based on Article 129a, now Article 153), the 1997 Directive amending the 1984 Directive on misleading advertising so as to include comparative advertising, and the 1997 Directive on the protection of consumers in respect of contracts negotiated at a distance, both based on Article 100a (now Article 95).

Transposition and implementation

Article 28 of the Directive required Member States to adopt and publish national measures transposing the Directive by 13 December 2013, with a view to applying these measures from 13 June 2014.

From October 2012 to April 2014 the Commission organized five transposition workshops to assist Member States. Nevertheless, 17 Member States⁹ were late with their transposition and the Directive became applicable in all 28 Member States only from the end of 2014.

Member States chose different transposition techniques: some Member States transposed the CRD by incorporating it into existing laws (for example their civil codes), others adopted a new piece of legislation transposing the CRD almost verbatim, and some chose a combination of the two.

VIII. CONCLUSION

The policies of e-commerce⁹ have not been favorably exploited. The vulnerable consumers involving individuals and groups are yet to experience the full force of E-commerce. Better and immediate regulations are needed to avail electronic exchange of both goods and services. Most consumers are ill informed when it comes to monetary and budgetary matters.

This kind of ignorance can bring about vulnerability to the consumers. The economic, monetary and budgetary clauses suggest the acquisition of economic power by the consumers in the future. The long procedures and formalities on monetary and budgetary policies may distract the consumers and consequently expose them to exploitation.

Countries from Africa, Asia and America prefer to buy things especially electronics and automobiles in Europe. In this regard, the policies employed by the UK and the entire world should protect the international consumer. The formulation of better and convenient policies can ensure that consumers are assured of a better, healthier, convenient and economically powerful market and trade.

Research should be conducted to find better policy frameworks within the EU and in the UK which can enhance consumer protection. Consumers have in the past been exploited by various states within the European region and this fact has led to the deterioration of economic standards in the region.

Various governments under the EU should allocate more funds towards creation of mechanisms that would eliminate cartels which have exploited innocent consumers for decades. The initiative cannot however be realized if the EU member states do not demonstrate the will to safeguard the consumers in the European region. Whether the countries enforce the legislation or not is not an issue. The right legislation for consumer protection must first be established.

List of References

Micklitz, H. (2010). The many facets of European consumer law. *Common Market Law Review*, 47(1), 5-61.

Twigg-Flesner, C. (2011). The Europeanization of national private law: Has the EU kept its promise? *Common Market Law Review*, 48(6), 1577-1623.

Howells, G., Micklitz, H. W., & Wilhelmsson, T. (Eds.). (2012). *European Consumer Access to Justice Revisited*. Springer.

Weatherill, S. (2007). *Consumer law and policy: Text and materials on regulating consumer markets*. Taylor & Francis.

Micklitz, H. (2016). The Constitutionalization of European Private Law: On the Function of Constitutional Pluralism as a Legal Paradigm. In *Constitutionalization of European Private Law* (pp. 121-162). Oxford University Press.

Schulze, R. (2009). Common European Sales Law (CESL): Some thoughts on its optimum legal form. *European Review of Contract Law*, 5(3), 242-269.

Benöhr, I. (2013). The EU Consumer Rights Directive: A Step Forward or a Step Back? *European Review of Contract Law*, 9(2), 106-124.

Willett, C. (2005). The harmonization of European contract law. *Modern Law Review*, 68(6), 1035-1053.

Leczykiewicz, D. (2007). The enforcement of EC consumer law: In search of accountability. *Common Market Law Review*, 44(6), 1619-1659.

Kerschischnig, G. A. (2014). Consumer Law in Austria: New Developments and Challenges. *European Review of Private Law*, 22(2), 227-244.