

EU consumer law

Making the internal market work for consumers

In a world defined by digital connectivity, artificial boundaries still prevent consumers from unlocking the potential benefits of cross-border purchasing, with many markets making it hard for people to shop around.

Seven out of 10 UK consumers believe the EU has improved the choice of products and services available, but only 41 per cent believe it has improved consumer protection¹. This helps to explain why UK consumers spend 86 per cent of their income at home, and only 10 per cent on goods from elsewhere in the EU².

EU policy context

In February 2007 the European Commission began a review of the eight directives in its main body of consumer law (called the *acquis*)³. The revision seeks to harmonise trading standards across the EU member countries in order to boost cross-border retail trade in goods and services – and particularly through e-commerce. It provides a unique opportunity to step back and take a fresh look at consumer protection within Europe.

The European Commission recently said it wants to empower consumers with improved rights and more accessible information. Turning this into reality must start with changes in the consumer *acquis*.

NCC's call for action

A consumer law framework should enable individuals to understand and enforce their rights.

The NCC is calling for:

- ▶ **Rules that are easy to understand for domestic and cross-border transactions;**
- ▶ **Minimum harmonisation as the model for European consumer law;**
- ▶ **Digital contracts to be covered by the *acquis*, and other gaps in protection to be filled; and**
- ▶ **A general duty of good faith, to 'future-proof' consumer law.**

Easy-to-understand common rules

The general approach

Where similarities exist in all consumer contracts it makes sense for one overarching directive to set the standard. However, the many differences across service sectors make it impractical to adopt a one-size-fits-all approach⁴.

Domestic and cross-border sales

One set of rules for both domestic and cross-border transactions is the most practical means to avoid legal confusion between member states, but high standards are important. Consumer protection must not be watered down to make things simpler.

Research is needed into why, despite the increasing economic integration of the EU, there is so little cross-border consumer activity. This should cover regulatory barriers and anti-competitive practices, and also consumer motivations and behaviour⁵.

Minimum harmonisation

Changes to the acquis must not reduce consumer protection in the UK. The minimum level of policy standards for EU member states should be set in line with the maxim: 'As much competition as possible; as much harmonisation as necessary'.

Maximum harmonisation should only be necessary when market failures become serious enough to warrant it. Otherwise there will be a race to the bottom in consumer protection.

Filling the gaps in consumer law

Digital content

The scope of the current Consumer Sales Directive is limited to 'tangible movable items': consumers are less protected when buying expensive digital products than when they buy a pen. Including purchases of software and data will help to end this inconsistency. NCC recently analysed the agreements in 25 software titles, raising concerns about confusing language and the fairness of the terms themselves⁶.

Commercial guarantees

Including a set of default rights, even if they are not stated in a commercial guarantee, will set a minimum level of protection for consumers.

A general duty of good faith and fair dealing

An overarching duty of good faith will ensure that the acquis has principles-based consumer protection at its heart. This is already happening with the Unfair Commercial Practices Directive. Complementing this with a general duty would help to 'future-proof' the acquis and avoid the duplicity that exists in some existing sector-specific legislation.

References

1. *Opinions and experiences of Citizens in EU-25: Special Eurobarometer 254*, Internal Market, October 2006
2. Juan Delgado, *Single Market Trails Home Bias*, October 2006, www.bruegel.org
3. *Green Paper on the Review of the Consumer Acquis*, COM (2006), 744 final, February 2007 http://ec.europa.eu/consumers/cons_int/safe_shop/acquis/green-paper_cons_acquis_en.pdf
4. *Making the European internal market work for consumers*, NCC, May 2007 www.ncc.org.uk/nccpdf/poldocs/NCC158ft_european_internal_market.pdf
5. *Uniformity or diversity? The future of European consumer policy*, NCC, January 2007 www.ncc.org.uk/nccpdf/poldocs/NCC143ft_uniformity_or_diversity.pdf
6. *Whose license is it anyway?* NCC, January 2008

The National Consumer Council makes a practical difference to the lives of consumers around the UK, using its insight into consumer needs to advocate change.

We work with public service providers, businesses and regulators, and our relationship with the Department for Business, Enterprise and Regulatory Reform – our main funder – gives us a strong connection within government.

We conduct rigorous research and policy analysis to investigate key consumer issues, and use this to influence organisations and people that make change happen, in the UK, Europe and internationally.

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