

CONSUMER PROTECTION AND PRACTICE IN THE EU

Background

There have been laws to protect consumers for many centuries. Originally, they were mostly about sub-standard or fake day-to-day products - diluted milk or beer, chalk in bread, and gold mixed with cheaper metals, for example. Although the laws were intended to stop deception, they were demanded as much by traders as by consumers. Honest craftsmen and food suppliers did not want to lose business or have to cut their prices because of unfair competition. The parallel interests of manufacturers and traders and of consumers remain important features of consumer protection in Europe today.

Comprehensive consumer protection as it is discussed and implemented now began to develop only at the end of the 19th century, in the US and in Europe. It was a consequence of the industrial revolution. Until this took hold, most things which people ate, drank and used in their homes they either grew and made themselves or bought from others in their local community who they knew personally. Industrialisation separated production and distribution from the community and greatly increased the range of products available. The market became impersonal and goods increasingly came from factories and farms far away. There was thus much more opportunity for deception. And it was much more difficult to get redress for poor goods from a large and distant factory than from a neighbour who had probably made what he sold you himself. In addition, the development of advertising exposed consumers to a mass of information which they could not assess - it might be accurate and realistic, misleading or completely false, but how were they to know?

Most countries in western Europe began to develop comprehensive consumer laws in the period after 1950. At first, this was done through piecemeal legislation - specific laws to deal with individual issues, such as honesty in advertisements, better consumer information through labelling on fabrics and food, and basic safety requirements. Gradually, the idea emerged of a recognised set of consumer rights, and a coherent body of legislation and institutions to protect them. As a result, in the last 20 years many countries adopting consumer laws for the first time have used a wide-ranging consumer protection act covering many aspects of consumer rights. This has often been the approach in countries emerging from planned economies (including those now in the European Union), but has also been used in many developing countries in Latin America, Asia and Africa where consumer rights previously received little attention.

In the EU, there are European laws (Directives) with which national laws have to apply in individual countries. However, Directives define general requirements which have to be met by each country, not how national laws should be organised. As a result there are still considerable differences in the structures of consumer legislation and the institutions which enforce them. [There's more detail about the EU requirements on page 00.]

Consumer policy

The idea of a set of **consumer rights** was first proposed by President Kennedy in a speech to the US Congress in 1962. The date was March 15th - subsequently adopted by the worldwide consumer movement as World Consumer Rights Day and designated European Consumer Day in the EU.

Kennedy listed four consumer rights. These have since been debated and extended by consumer organisations to a set of eight rights adopted and promoted by Consumers International and its members. Most consumer laws are designed to secure one or more of these rights and a comprehensive Consumer Protection Act will cover them all.

These rights are described below. But before looking at them in detail, it is important to consider how they fit into a general political framework.

Competition

Consumer interests in a market economy are met in part by making the market work effectively. If consumers have choice, pressure is put on manufacturers and retailers to provide high quality and to keep prices down. If they try to sell poor or overpriced products, consumers will 'vote with their feet' and buy from somewhere else. This at least is the theory and to a considerable extent it is true. But there are many barriers to effective competition.

Where possible producers try to limit it in order to increase their profits. One element of consumer protection therefore is laws and institutions which **promote and regulate competition** by preventing businesses from abusing their position in the market. The most common anti-competitive practices are private agreements among groups of producers (called **cartels**) to 'fix' the market, for example by agreeing to charge the same prices or to divide the market between them geographically. Competition can also be limited if a **single firm becomes dominant** in a particular market - if most supermarkets are owned by the same company, it can put up prices because consumers have nowhere else to go. Competition regulation therefore usually includes powers to stop an individual firm becoming too powerful, for example by further preventing takeovers if it already controls a substantial part of the market. Most governments see competition regulation as good for the overall effectiveness of their manufacturers and service industries as well as good for consumers. This is because competition drives efficiency and therefore competitiveness in international markets - helping their exports to sell and making life tough for importers.

Competition is also limited if consumers cannot make effective choices. For this they need good information. This means understanding the types of product available (the advantages and drawbacks of cotton compared with wool and synthetic fibres for different types of clothes, or of different types of mortgages to buy a house, for example). It also means detailed facts about each of the brands and models on offer, and about price. Left to themselves, many producers will not provide comprehensive information. Some will deliberately mislead in order to make a sale. Others will be selective or rely on selling image rather than the substance of their products - a common feature of advertising campaigns. Competition is thus also promoted by **empowering consumers to make well-informed choices**. This may include both by restricting what business can do and by requiring accurate and consistent information to be provided.

Empowerment and protection.

Whether or not a market is highly competitive, consumer rights have been defined because businesses are much more powerful than individuals. They not only make or distribute products or services, some of which are essential for consumers, but they have detailed knowledge of these products/services and in many cases very large resources to advertise them and to deal with criticism if they do not work properly. Individuals are very weak in comparison; they cannot possibly be expert in all the products and services they are offered and they do not have the time or money to do market research, assess competing products

and check prices in dozens of shops, or to take legal action for compensation if things go wrong. Consumer rights are thus about **altering the balance of power** between companies and individuals.

This is done by:

Empowering consumers. This means training and education, specific information about products and services, and easy-to-enforce legal rights. Typically, information needs are supported by requiring things like labelling, effective instructions, minimum factual information in advertisements and price marking. Government agencies also publish general information and consumer education may be included in schools. Legal rights include the right to return products which do not work or about which the consumer has been misled.

Placing restrictions on business. Helping consumers to be well informed does not stop businesses from trying a wide range of strategies and tricks to persuade them to buy or to escape responsibility for poor products. Consumer protection thus also includes limitations on what businesses can do. The starting point is that products must be safe and in general terms do what they claim to do and to last a reasonable time (mostly consumers have no way of checking these things before they buy). Businesses also cannot use unfair terms in contracts (a particular problem with services). And they have to give accurate information about their products, including in advertisements.

Consumer rights

As well as being promoted by consumer organisations, these rights are supported (though not listed in this form) by the United Nations Guidelines on Consumer Protection, adopted in 1985 and revised in 1999.

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

Consumer protection in the EU

Most countries in the EU before its recent expansion had adopted national laws establishing some or all of the eight consumer rights. The main purpose of action taken by the EU has been to create consistency between countries, mainly by establishing minimum requirements on specific consumer protection issues.

How the EU operates

The EU is the result of agreement by the member countries to do certain things together, defined by a series of formal treaties. The original, and still the principal, purpose is to create a single market so that businesses can trade where they like and consumers can shop where they like without difficulties and restrictions caused by different national legislation and market culture. And the objective of the single market is to promote competition, and therefore business efficiency and economic growth.

The EU does not itself make laws for its member countries. It works through Directives, which, when they are agreed by the members, have then to be translated by each country into its national laws. Directives are adopted by the Council of Ministers (ie by representatives of the member governments). The European Parliament, which is directly elected, also plays a part in the adoption process.

Conformity with the full set of Directives (known as the *acquis*, from a French word meaning accumulated experience) is a requirement for countries wanting to join the EU. The work involved in amending and extending existing national laws is one of the reasons why accession takes many years.

Originally, consumer protection was not regarded as a separate issue for the EU. Consumer benefits would come from making the market work effectively and consumer issues were considered in relation to the promotion of the single market. So consumer rights were seen as part of developments in contract law, transport policy, competition, food, safety standards and so on.

This gradually changed from the mid 1970s onwards, but it was not until the Maastricht Treaty (1993) that it became formally possible to make consumer policy Directives which do not relate directly to either market integration or harmonisation. This led in 1995 to the establishment of a separate Directorate for Consumer Policy in the European Commission. This was later expanded to include responsibility for health and food safety and standards and is now DG Sanco (health and consumer protection).

There are dozens of Directives which relate in some way to the interests of consumers; it is not necessary to know the detail of them all. But the most important cover four main issues.

1. SAFETY

Various Directives require that anything sold to consumers should be as safe as reasonably possible and set out the criteria which they must meet to ensure this. Producers and importers are responsible for the safety of what they sell. Each country has to have agencies responsible for checking compliance and getting unsafe products removed from the market if necessary.

There are separate Directives for some specific product areas - food, toys, chemicals, cosmetics, for example. In addition there is a General Product Safety Directive which covers everything and therefore applies the safety requirements whether or not there is a separate Directive for a particular product.

The European Commission also manages warning systems for unsafe products so that if a problem is found in one country the rest of the EU (and others outside the Union) are quickly informed and can take local action if necessary.

The safety regime is described in more detail in the next section (page 7).

2. GETTING WHAT YOU PAY FOR

When a consumer buys a product or service, there is a contract between him or her and the seller. The consumer agrees to pay a specific price, the seller to provide what the consumer is expecting. The details of a service are usually set out in a written agreement. Products may be bought on sight (in a shop) or from a description in a catalogue or on a website, but if you offer to buy and the seller agrees to sell there is an implied contract even if its terms are not written down.

Directives cover three problems:

- The product is **not what you agreed to buy** - different from what the catalogue said or what was described on the box it came in, for example
- The product **does not work properly**, is damaged, or quickly breaks down.

In these cases, the consumer is legally entitled to a refund, a replacement, a repair, or a part refund - whichever he/she chooses.

- There are **unfair terms** in a contract - usually for a service. These might include requirements such as a non-returnable deposit (which you lose even if the product or service is not satisfactory) or open-ended timing, so that you have no right to cancel or get compensation even if a service takes twice as long as it should have. Unfair terms are simply made illegal - they must not be written into contracts and are unenforceable even if they are and a consumer signs an agreement containing them. Contracts also have to be written in plain language so that they are easy to understand.

There are some specific rules about **holidays**. These prevent tour operators increasing prices after a booking has been made (except where these result from tax changes or currency fluctuations) and require tour operators to contribute to a protection fund which will pay for holidaymakers to get home if the company goes bust while they are on holiday.

At one time it was common for suppliers to put waiver clauses in contracts, so that the consumer agreed that his/her legal rights would not apply. These clauses are now illegal and unenforceable.

3. INFORMATION FOR CONSUMERS

Directives cover a range of **labelling** requirements. Food, for example, must carry a full ingredient list, identify potential allergens (eg nuts). There are also rules for describing food as 'organic' or using regional food titles such as 'parmesan' cheese or 'parma' ham. And genetically modified foods must be labelled.

Similarly, large domestic appliances have to have energy labels which give information about electricity consumption in a standardised way.

Some specific **price information** is also required by law. In particular, supermarkets cannot just price packets of food or other products but have also to give **unit prices** - that is, to say what the packet price translates into for a standard quantity (5.5 Euros per 100ml, for example). This allows consumers to compare value for money easily even where the products come in different quantities.

Standardised information also has to be given for financial services such as loans and credit cards. For these, the interest rate has to be given before a consumer signs up according to a

common method of calculation - the annualised percentage rate (APR). Again, this allows consumers to compare products in an easy and fair way.

There is again a special requirement for package holidays; brochures must give full information about what is offered - travel, accommodation, prices, payment schedules. These details cannot be changed after a holiday has been booked.

4. ADVERTISING AND OTHER MARKETING

Advertising in Europe generally has to be honest, decent and truthful. Exact rules about how this is regulated vary from country to country. In the UK, for example, there is a self-regulation system through an Advertising Standards Authority (ASA), managed and paid for by the advertising industry. It publishes codes of practice with which advertisers are expected to comply. Generally this has worked well - partly because it is closely watched by the government and the media; the advertising industry knows that if it does not do a good job the ASA will be replaced by a public agency with legal enforcement powers. In other countries there is direct state involvement and some tighter rules, particularly about advertising directed at children.

The EU has issued Directives on some particular marketing problems.

Distance selling. Where products or services are sold by telephone, mail order or online, it is easy for consumers to be deliberately misled or to get inadequate information. The Directive requires the supplier to give a range of information before a purchase is made - his own contact details (including address), a full description of the product/service, the full price, delivery arrangements and details about the consumer's right to cancel. Written confirmation of sales agreements also has to be given. Where loans and credit cards are being sold, the interest rate and the period also have to be given. Consumers have the right to cancel an order within seven days (longer in some countries), and the goods must be supplied within 30 days. Telephoning consumers through automated dialling systems or sending them marketing faxes is illegal without their prior agreement.

Inertia selling - sending goods which have not been requested and then demanding payment. Consumers now have no obligations at all if this is done - they can simply keep or get rid of the goods as they wish. (Previously they had first to give the sender a chance to collect them.)

Doorstep selling Except where the seller is a food and drink roundsman or selling from a catalogue, a consumer has an automatic right to cancel an order within seven days (again, longer in some countries) if someone sells them something after calling at their home or anywhere else away from his normal place of business.

Unfair commercial practices. This is about the use of misleading or aggressive selling methods. The Directive outlaws false information about the product, the seller, repairs, price, or comparisons with other products where these are 'materially likely to distort the behaviour of the average consumer'. It also bans harassment, coercion and the use of force. The directive lists 31 unacceptable practices, but recognises that there may be others - rogue salesmen are very inventive!

Further developments

Most of these Directives set minimum requirements - national governments can set higher standards if they wish. Some have done so, most commonly by extending the period during

which a consumer can cancel an agreement made with a seller at home or on the phone or internet or by mail order.

The European Commission is now reviewing eight Directives and considering whether to move to full harmonisation. This would mean that Directives would have to be implemented in exactly the same way in every country, with no opportunity to have tighter rules. Consumer organisations generally oppose this because the tightest rules will not get agreement from 25 countries. This means that consumer protection may get reduced in some countries by a fixed all-Europe law.

It is also important that each Directive requires national governments to be responsible for supervising and enforcing its requirements. The type and structure of government agencies charged with doing this varies from country to country. There is no proposal to unify these arrangements, and there is no agreement that there is a single best way of enforcing consumer laws.

Product safety and product liability

The EU has a single overarching product safety law - the **General Product Safety Directive**.

The purpose of this is very simply described in the Directive itself: *'Producers shall be obliged to place only safe products on the market'*.

How can a producer be sure a product is safe? The Directive gives some criteria:

- meeting relevant national laws
- conforming to European health and product standards which have been adopted as national standards
- meeting other relevant national standards, EC guidelines, codes of practice
- using state-of-the-art technology
- meeting reasonable consumer expectations

If a product causes safety problems, producers are obliged to give information to consumers, recall it if necessary. Distributors also have to keep good records so that products (and where they or faulty components came from) can be traced, to monitor their products for safety risks, and to pass on information about possible problems.

On the government side there must be a designated authority responsible for monitoring and enforcing the safety requirement and :

- check the market by taking and testing samples
- requiring warning labels where there may be some risks in using a product
- take action if there is a problem - ordering a temporary ban or that a product must be withdrawn completely
- make arrangements for consumers to complain about potentially hazardous products or to report actual safety incidents.

In addition to this general Directive, there are more detailed requirements for chemicals, toys, personal protective equipment, recreational crafts, cosmetics, pharmaceuticals, food, fire safety in hotels and fireworks. Some products, including for example, cars and electric plugs,

cannot be sold at all unless they have passed safety tests. But the general approach of these more detailed sector regulations is the same as for the general Directive, setting safety requirements in relation to standards and other reference material if there are no relevant standards.

The EU supports other programmes which contribute to safety.

- **Making standards.** Work on products is done by specialist European Standards bodies (CEN and CENELEC), which in turn work closely with the international standards organisations ISO and IEC. The EU gives a grant to a group which represents consumers in the standards negotiations - ANEC, which is based in Brussels. Europe is also an active participant in Codex Alimentarius, the global body for food standards.
- **Rapid alert systems.** These are reporting arrangements to enable national authorities to tell one another about unsafe products so that they can take action quickly in their own countries. If necessary, the European Commission can take EU-wide action to ensure that dangerous products are removed from the market. The main alert procedures are RAPEX (products) and one for food.
- The **European Food Safety Authority**, set up in 2002 to monitor food problems and hazards across the EU.

Product liability

What happens if someone, or a group of people, or their property is damaged by a product?

The answer is in the first paragraph of the Product Safety Directive: *'The producer shall be liable for damage caused by a defect in his product'*.

Where products are imported, the distributor carries the liability.

This means that consumers can sue producers for compensation if they are harmed. They have to prove both the extent of the damage/harm and that it was caused by the product - not always easy to do. But they do not have to show that the producer was negligent; so if the producer has followed all the correct procedures in meeting standards, writing good instructions and so on, he is still liable if something goes wrong. However, damages may be reduced if the way the consumer used the product was partly to blame.

Three defences are allowed for producers:

- That the defect did not exist when the product was sold
- That the defect resulted from compliance with regulations (ie that the regulations were inadequate)
- *'that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered.'*

This last point, called the **development defence**, is hotly disputed. Consumer groups have always disliked it because it may allow producers to be less thorough with their safety assessments for new products. And it means that consumers could be left without compensation even though it is clear what harmed them.

A recent review by the EC concluded that it should not be changed and that the Directive strikes a good balance between the interests of consumers and producers. They decided that strict liability (ie no development defence) would limit product development and divert

research funds into insurance against more compensation claims. (Producers routinely take out insurance against product liability claims.) National governments are allowed to have stronger product liability laws if they wish, but only Luxemburg and Finland have struck out the development defence.

Consumer organisations in the EU

There are three main types of consumer organisation in the EU:

Fully independent NGOs. The biggest of these publish big-circulation comparative test magazines which earn them a large income from subscribers. They use some of this money to support general services for all consumers - campaigning for consumer rights and policies, perhaps consumer education or public advice centres. Most started 40 or 50 years ago. They are not-for profit organisations - that is, they do not have shareholders but use any money they make to do more work for consumers.

Independent magazine publishers are important in the UK, The Netherlands, France, Belgium, Italy, Spain and Portugal. The magazines in Belgium, Italy, Spain and Portugal are published by the same group, which is based on the Belgian organisation - consumers' own multinational company (they also have a magazine in Brazil). The biggest magazine circulation is in the UK, where it is about 600,000; Which?, the UK organisation, has about 500 staff. None of these magazines takes any advertising; their purpose is to give consumers independent advice about products and services; if they took payments from manufacturers for advertisements, people would question whether this affected their recommendations - so their income comes only from individual consumers.

Some smaller and younger organisations also publish magazines. In Slovenia, for example, the consumer organisation has had a magazine with test information for 15 years; but it is not easy to earn enough income to make this viable - Slovenia has a population of only about 2.5 million, so it is almost impossible to attract a big membership.

There are also many much smaller independent consumer organisations in Europe, mostly working on advice services or campaigning (or both). They have members who pay subscriptions but they depend very heavily on grants - from their national or local government or from the EU or other agencies. Smaller, often community based, groups are a particular feature in Spain and Italy, but they exist in most countries alongside the big magazine organisations; and they are also the type of group in almost all the new member states of the EU.

Institutes and organisations supported by the government. In Austria, Germany, France and Denmark there are semi-independent organisations which publish comparative test magazines. Like the independent magazines, these carry no advertising and charge subscriptions, but they have some government financial support. Some, such as Stiftung Warentest in Germany do little work outside their magazine, while others have a very substantial policy, representation, education of advice roles.

Government consumer agencies

In Sweden and Norway consumer policy, test magazines, advice centres, consumer education, ombudsmen services are all part of a government structure and almost entirely government funded. In Germany and the UK there are also fully funded agencies set up to represent consumers in government policy-making and (in Germany) to manage a

countrywide network of advice centres. In some countries there are also important specialist government-funded groups representing consumers in utilities - energy, railways, telecommunications for example.

Government departments and regulators

These develop policy and enforce legislation. In some countries, enforcing consumer safety legislation is the work of local government, in others local offices of a national agency.

All these arrangements have had their successes and failures over the years and there is no right and wrong way to organise and promote consumer protection and information.

Consumers International is often asked what the best roles are for government agencies and for independent NGOs. We have some simple principles about this but these do not provide a complete answer - because what is best may vary from country to country. But:

- Only government can legislate and its agencies have to enforce the law.
- Independent NGOs are an essential part of an effective consumer framework. The eight consumer rights include the right to be heard in policy making and consumers should be able to represent themselves directly, not as government appointees.
- Consumer empowerment comes from information, education and advice. Generally independent NGOs are better at providing these than government, not least because consumers tend to trust them more - they do not have other agendas to consider in their work.
- Since a lot of education and advice will be provided free to consumers, it is usually impossible for independent NGOs to find the resources to do this work on a large scale. It is useful to consider how government can enable NGOs to manage effective services in the interests of the whole community.

The most valuable consumer advice is comparative test results. Unfortunately experience all over the world shows that it is very difficult to develop a self-financing magazine which can meet the high costs of testing and other research without paid for advertising. The western European magazines, and similar publications in the US, Australia and New Zealand seem to have been lucky - they were started at a time when they attracted large audiences without needing to spend a lot on marketing. Efforts to copy this in countries as diverse as Russia, the Czech Republic, India, Brazil, Argentina and Canada have had very limited success. As a result, Consumers International encourages its members to explore other ways of attracting members and raising money before spending time and taking risks with a magazine.

Collaboration

Europe's consumer organisations work together in two ways. They are mostly members of **BEUC** (the Bureau Europeen des Unions de Consommateurs (European Consumer Organisation). Based in Brussels this is a policy and lobbying operation set up to represent consumer views to the European Union - to the Commission, Parliament and Council of Ministers. BEUC is financed by some money from the Commission and by payments from its member organisations. It influenced all the Directives described in this briefing.

They also work together in **International Consumer Research and Testing**, a group set up to co-ordinate collaborative tests in which products sold in several countries are tested once and the results then reported by different organisations. This saves them a lot of money and ensures that the same information is available to consumers across the EU.