

Consumer Protection in EU and Ukraine

22 January 2007

Disclaimer

This report has been developed with the help of one international consultant (Per Larsson) and three Ukrainian consultants (Olena Lysenko, Oleg Samchishin and Olexander Frolov). The international consultant is responsible for the conclusions and recommendations as well as the description of consumer protection in the European Union. The description of the Ukrainian system of consumer protection is based on the written input from the Ukrainian consultants. The Ukrainian consultants' report is attached in its whole and include separate recommendations and conclusions and the results of conducted surveys. The report was commissioned by the UNDP / EC – Consumer Society and Citizen Networks' Project in December 2006.

Table of Contents:

Conclusions and recommendations	5
The Consumer Society and Citizen Networks Project.....	9
Consumer Protection in the EU (and EEA) Internal Market	10
Regulatory Framework.....	10
Introduction	10
European General Product Safety Directive	11
Old and New Approach Directives	11
Conformity Assessment.....	12
Technical File	12
Revision of EC Directives	13
Unfair Commercial Practices Directive and the Directives on Misleading and Comparative Advertising	13
Unit Prices Directive.....	14
Unfair Practices Directive.....	14
Unfair Contract Terms Directive	14
Sale of Goods and Guarantees Directive	15
Distance Selling Directive	15
Directive on Contracts Negotiated away from Business Premises (so-called Doorstep Selling Directive)	16
Timeshare Directive.....	16
Package Travel Directive.....	16
Injunctions Directive	16
Regulation on Consumer Protection Cooperation.....	17
Electronic Commerce Directive.....	17
Product Liability Directive	17
EU Policy Programme	17
Enforcement	18
Market surveillance	18
Surveillance and Enforcement Authorities	18
International Consumer Protection en Enforcement Network (ICPEN)	19
Standards, Certification and Notification	19
Harmonized Standards.....	19
CE-Marking	20
RAPEX	21
EU-integration	21
Information to Consumers and Consumer Education	22
UN and Consumer Education	23
EU and Consumer Education.....	23
Consumers International and Consumer Education.....	23
European Consumer Centres Network.....	25
The European Consumer Diary	25
Inter-active Consumer Education Project	26
Consumer Organisations.....	26
Consumer International.....	26
European Consumers' Organisations	27
ANEC	27
BEUC.....	27
National consumer organisations in EU Member States.....	28
Complaint Mechanisms and Redress.....	30
Consumer Protection and Consumer Societies in Ukraine	33
Regulatory Framework	33
Standards, Certification and Notification	35
WTO-accession and European integration	36
Enforcement	37

Information to Consumers and Consumer Education.....	38
Role of Consumer Organisations.....	39
Complaint Mechanisms and Redress.....	40

ANNEX I - Consumer rights protection in Ukraine Ошибка! Закладка не определена.

Conclusions and recommendations

Consumer Information

Consumers should be aware of their rights as consumers and the available remedies if their rights have been violated. They should also have easy access to information as regards to product safety, quality and price comparisons as well as sustainable consumption. The State has the responsibility to make this information, and in particular consumer rights information, available. In Ukraine, State Consumer Standard (SCS) is not making this kind of information available on their web site and only limited through other means. The Ministry of Health disseminates some consumer related information to prevent diseases. But this is not enough. Consumer information should be channelled to consumers in a much greater extent either through government or non-government channels. Most EU Member States have developed systems for communication of information through web-portals, magazines, cooperation with media, European Consumer Centres, Citizen Advisory Bureaux (NGOs partly financed by the government found in Great Britain, Ireland and Poland), information campaigns, local government information and consultation offices etc.

To make information accessible to consumers, especially on safety and health aspects of products and legal rights and remedies of consumers, access points should be considered. For Ukraine, with a relatively low public Internet access, consumer information should be available physically through some form of consumer information offices. Such offices could be either governmental or non-governmental. In a governmental system of information offices, municipalities could develop a system similar to the Swedish system of municipal consumer counsellors (konsumentrådgivning). In the Swedish system, counsellors not only provide information but also act as a first remedy in disputes between consumers and businesses. Around 70% of all disputes are solved by these consumer counsellors. Ukraine could also opt for a non-governmental system like the British system of Citizen Advisory Bureaux (CAB) which are partly supported by the government and build to a large extent on voluntary contributions. The CABs function like a form of referral system along with disseminating information on citizen rights.

Alternative Dispute Resolution

Most consumers are hesitant to take consumer disputes to formal courts, especially when the value of the dispute is low. Therefore, alternative dispute resolution (ADR) is popular in EU-countries to solve consumer-business disputes. ADR is also a priority for the EU and mechanisms have been supported in all Member States within the framework of the European Consumer Centre Network (former European Extra-Judicial network) and by recommendations for minimum standards in ADR¹. Ukraine has an embryo to an ADR-system of so-called “treteyskie” or “arbitrazhnie” courts. These courts are a form of ADR and handle, *inter alia*, consumer disputes between retailers/producers and consumers. The costs are carried by the parties. It is highly advisable that ADR in consumer matters are continuously supported in Ukraine. Interesting examples to study are Poland and the three Baltic States that have develop ADR in recent years. Great Britain and Germany are two old EU Member States with a rich experience of ADR. Another example is Sweden, who has developed a somehow different approach with more government involvement through the National Board for Consumer Complaints (ARN). ARN, unlike many other forms of ADR,

¹ http://ec.europa.eu/consumers/redress/out_of_court/adr_recommendations_en.htm

does not have the powers to bind the parties by binding decisions but nevertheless most parties in Sweden respect ARNs decisions. An important spin-of from ADR is that the parties are empowered and that less pressure is placed on the state to solve disputes as a first remedy.

Capacity building for Consumer Organisations

Consumer organisations have played a critical role in promoting consumer protection in Ukraine. However, their capacities could be further strengthened by linking them to knowledge and practices of consumer organisations in EU-countries and developing trainings build on European and International experiences. It could be interesting, for example, to tap into the TRACE-trainings of BEUC.² TRACE is a series of training courses designed to help build the capacity of European consumer organisations. It could also be beneficial for Ukrainian consumer organisations to have joint learning events with consumer organisations from new EU Member States in the region. This would give Ukrainian organizations access to knowledge on accession relevant issues as well as link them up with sister organizations in the region. Relevant topics for such trainings are (i) methods of promoting consumer participation in policy making and service provision as well as methods of campaigning consumer interests, (ii) methods of promoting testing as well as quality and price comparisons, (iii) methods for consumers to participate in standardization processes, (iv) methods of promoting the interests of individual consumers and groups of consumers (class-action) in dispute resolution, and (v) developing strategies for resource mobilization and international cooperation.

Measuring Consumer Satisfaction

Politicians and authorities, in interaction with the business community and relevant interest organisations, are responsible for consumers being able to act in markets that work as smoothly as possible. As in many other areas, it is necessary to have a firm foundation of facts on which to base decisions in order to ensure the best possible input and allocation of priorities. EU as well as most EU Member States and regional organisations have developed models and indexes for measuring consumer satisfaction. These models could be useful for Ukraine to develop methodologies and later involve different consumer stakeholders to finance and perform measuring of different product segments.³

Media and Consumer Issues

In Ukraine, media's role in consumer protection should be strengthened. Best practices like the magazine "Spravochnik Potrebitya" should be promoted and capacity building and advocacy activities should be targeted at journalists, publishers and broadcasters. Media is not the least important to publish information about the results of market surveillance activities of SCS. Media should also be encouraged to cooperate with enforcement authorities as it creates a powerful tool deterring manufacturers/distributors from putting dangerous products on the market. Failure to comply with requirements will be publicized – an incentive to conform to applicable requirements. Activities to undertake are for example joint seminars with journalists, publishers and broadcasters and civil servants from surveillance authorities. Another example of activities for greater media coverage of consumer issues is to encourage consumer organisations to compile studies, data ect. for media as part of consumer organisations campaigning strategies.

² <http://www.trace-beuc.org/>

³ http://ec.europa.eu/consumers/cons_int/serv_gen/cons_satisf/index_en.htm,
<http://www.norden.org/pub/sk/showpub.asp?pubnr=2005:574>, <http://www.kvalitetsindex.se/>

Division of Functions

The Ukrainian consumer protection and market surveillance capacity is concentrated at SCS. In addition, SCS has an important policy function and participate in WTO and EU-harmonization processes. Many of the stakeholders met in the process of producing this report testified that SCS performs some of these functions better than others. It is a common perception that consumer protection is less of a priority than market surveillance for SCS. In addition, SCS has been downgraded in the executive hierarchy from once being a State Committee to now be an authority under the Ministry of Economy. It is unclear to the stakeholders met what kind of capacity exists in the Ministry of Economy for consumer policy. It might be wise to consider a clearer division of functions and especially to improve the government's capacity for consumer protection, possibly by dividing the functions of market surveillance and consumer protection between two separate authorities and by building a consumer policy unit in the Ministry of Economy.

Consumer Education

Consumer education is essential to foster an aware and enlightened consumer society. Consumer education should be developed and integrated in to the basic curriculum of primary and secondary schools in line with the guidelines of UN, EU and Consumer International. The education should be practical and specific and influence the behaviour and endeavour of the pupils.

Government Support to Consumer Organisations and Dialogue between the Government and Consumer Organisations

EU Member States finance activities of consumer organisations.⁴ Article 42 of the Constitution of Ukraine and Article 24 of the Law of Ukraine "On Consumer Rights Protection" declare that the state should promote and support consumer organizations. However, the Ukrainian State does not finance consumer organisations. It would be a large step to European integration if the Ukrainian government could give core support to umbrella organisations and/or on a tender basis support activities and projects of consumer organisations. Another important step for the government would be to improve the dialogue with, and trust in, consumer organisations. This could be achieved in a series of consultative meetings or regular policy consultation. It also seems advisable that some policy in selected areas could be implemented by consumer organisations. For example, activities related to consumer education, consumer information or measuring consumer satisfaction.

Continue to support EU-harmonization

There are many important reasons why Ukraine should adopt the *acquis* in the consumer sector and recognize European standards. For example, if Ukrainian producers would follow harmonized standards and conform to the EC Directives, transaction costs in trade with EU-countries would be reduced. Also, the continues efforts to adopt *acquis* will enhance accession to WTO.

Independent Testing

The Ukrainian consumer protection system differs from most European systems in that there is a concept of independent testing of defect products. In most European Member States, there is a principle of duality between the parties. This principle means that in a dispute, both

⁴ Examples of funding levels: Czech Republic in 2004 supported consumer organisations with 650 000 €, Sweden in 2004 supported consumer organisations with 460 000 €.

parties have the right to submit written evidence in the form of e.g. contracts or certificates of inspection. The problem with the Ukrainian system is not so much in the theory of the system as in the application of the system. There is very little independent testing available, and in the absence consumers have to rely on the seller/producer's testing facilities. That leaves the consumer in a disadvantaged position. There is also state owned testing facilities, but they are underfinanced and often do not have the trust of consumers. This issue seems to be one of the major issues of Ukrainian consumer advocates and should be resolved either in that a system of independent testing houses are created or in that the system is changed and that dispute resolution is handled along the principle of duality. Consumer organisations could get engaged in providing these services but from a systemic perspective it seems unlikely that these organizations will have the recourses to provide these services without either state support or fees paid by the clients of the testing system.

The Consumer Society and Citizen Networks Project

This report has been developed within the frames of the UNDP/EU Consumer Society and Citizen Networks project. The overall objective of the Project is to promote consumer rights and economic empowerment through capacity building of non-governmental organisations (CSOs), in order to achieve good economic governance according to EU standards and common practices.

The Consumer Society and Citizen Networks project (CSCN) is a joint initiative of the European Union and UNDP started in 2006. Its goal is to increase civil society role in sound economic governance in Ukraine according to the European standards. Specifically CSCN aims at promoting access of citizens to information on product safety, consumer rights protection, and to results of independent testing, as well as promoting wide public discussion of challenges facing the consumer society in Ukraine.

CSCN works in three interrelated spheres: (1) knowledge transfer and capacity building of Ukrainian consumer organizations, spreading European practices of independent testing and product safety awareness; (2) providing citizens with access to consumer / economic empowerment information; and (3) access to justice and alternative dispute resolution:

- Knowledge transfer and capacity building: CSCN will share with Ukrainian consumer rights protection NGOs experience, technology, and knowledge of their European counterparts through study trips, seminars, and learning sessions. The project will promote cooperation between consumer unions, community organizations, consumer rights NGOs, state agencies, local self-government bodies, and private sector to create synergies and contribute to strengthening consumer rights protection in Ukraine.
- Improved access to consumer information: CSCN will participate in a wide public dialogue on product safety and standards, distributing information materials, holding working meetings and public hearings. The project will launch a comprehensive consumer awareness campaign to improve access of consumers to information on products available on the market and inform citizens of their legal rights and existing institutional mechanisms to utilize them. Relevant trainings for journalists and media representatives will be delivered.
- Access to justice and alternative dispute resolution: The project will improve access to justice for consumers pursuing complaints on consumer rights violations at local courts by conducting an information campaign targeted at local court judges. Besides CSCN will consolidate, analyse, and publish higher level courts decisions and best advocacy practices in the field of consumer rights protection, promote alternative dispute resolution approach (ADR) and launch pilot advocacy centres.

Consumer Protection in the EU (and EEA) Internal Market

Regulatory Framework

Introduction

Policy on consumer protection has a legacy of about 25 years in the European cooperation. The Member States have however been protecting consumers' interests for a longer period. The EU policy framework derives from [Article 95 of the EC Treaty](#). Initially, this Article was introduced to enhance the Internal Market for products and services by creating a level playing field between the Member States. EU consumer policy has until quite recently been driven by one of the key objectives of the Union, namely to create an Internal Market for goods and services. Only in the last years consumer protection has appeared as an end in itself in the European cooperation.

The EU consumer policy is not a holistic policy regulating all aspects of consumer protection. The EU Directives are a rather patchy framework regulating some areas in detail while leaving other areas unregulated. It should be stressed that the Member States still are responsible for having a holistic consumer policy framework and protecting consumers. The EU Directives have a minimum standard function in selected areas, especially in areas where the Internal Market is affected. Member States have the right to go further than the Directives in protecting consumers as long as the regulation does not hinder the free movement within the Internal Market.

EU Member States have as a consequence of the above said developed consumer protection systems that considerably differ from one another. In some instances, these differences have interfered with the Internal Market. For instance, considerable divergences exist in the legislation regulating business-to-consumer commercial practices in the Internal Market, whether resulting from national specific regulations, differences in general principles or from different legal practices.

Another example of the above said is the use of self-regulation and codes of conduct. In Denmark, Sweden and Finland, the use of codes is encouraged to flesh out general rules. The involvement of the consumer enforcement bodies is significant in elaborating these codes. Codes are also widespread in UK, Ireland and Netherlands, although consumer enforcement bodies have a more informal role. The use of self-regulation as a complement to regulation is less well-known in other Member States. The use of self-regulation appears to be growing in the EU, although along different lines in each Member State.

In general, EU consumer policy falls into two broad categories: horizontal and sectoral Directives.

Examples of horizontal Directives are: [European General Product Safety Directive](#), [Directive on Misleading Advertising](#), as amended by Directive on [Comparative Advertising](#), [Directive on Price Indications](#), [Directive on Unfair Terms in Consumer Contracts](#) and [Directive on the Sale of Consumer Goods and Associated Guarantees](#).

Examples of sectoral are: [Directives on Foodstuffs](#), [Cosmetics](#), [Textile Names](#), [Medicinal Products for Human Use](#), [Package Travel](#), [Contracts Negotiated away from Business Premises](#), [Consumer Credit](#), [Distance Selling Contracts](#), [Measuring Instruments and Timeshare](#).

European General Product Safety Directive

One of the key horizontal Directives is the European **General Product Safety Directive (GPSD)** which is the blueprint of much of the Member States' product safety legislation. The Directive regulates products that are made for consumers or likely to be used by consumers. According to the Directive only safe products may be placed on the Internal Market and the Directive flesh out what enforcement and surveillance activities the Member States have to carry out to safeguard that manufacturers, representatives or importers only place safe products on the market.

In addition to the basic requirement to place only safe products on the market, producers must inform consumers of the risks associated with the products they supply. They must take appropriate measures to prevent such risks and be able to trace dangerous products. Under the GPSD, the Member States are obliged to enforce the requirements on producers and distributors. They must appoint the authorities in charge of market surveillance and enforcement. In addition to the power to impose penalties, the Directive gives the surveillance authorities a wide range of monitoring and intervention powers.

The Directive also provides for an alert system (the RAPEX system) between Member States and the Commission. More about the RAPEX-system below.

The GPSD is horizontal in nature as opposed to sectoral consumer product policy, which only covers certain product types. However, in the absence of provisions on product safety in sectoral legislation, the provisions of the GPSD apply in general. The same applies in most cases when the GPSD offers further protection than provisions in existing sectoral legislation.

Old and New Approach Directives

Product Directives written prior to the New Approach do not take into account CE Marking and are known as **"Old Approach" Directives**. These Directives tended to include precise technical details within the text of the legislative document. This made assessment against the legislation relatively easy; however the Directives necessitated continuous adaptations to technical progress. Technical specifications for specific products needed frequent updating, which proved to be complicated and time consuming.

The "New Approach" Directives started to be used for different product types. Regulation of these products took on a more generic format, and was limited to "Essential Health and Safety Requirements." The rationale of the "New Approach" Directives is to set minimum standards (so-called minimum harmonization) for all Member States and thereby facilitate free movement of products within the Internal Market. All producers, representatives or importers have to be able to demonstrate that their products meet the minimum safety requirement of the Directives.

Conformity Assessment

The essential objective of a conformity assessment procedure is to enable public authorities to ensure that products placed on the market conform to the requirements as expressed in the provisions of the applicable Directives, in particular with regard to the health and safety of consumers. Conformity assessment may vary in levels of difficulty and complexity, depending on the level of risk associated with the product. If [a Harmonized Standard](#) is used to meet an essential requirement of a New Approach Directive, and if the risk of injury is low, no third party conformity assessment procedure is required.

A manufacturer or supplier may declare, after performing the necessary product evaluations (through a Declaration of Conformity), that the product meets the essential requirements of a Directive. As the risk of injury increases, the level of complexity of the conformity assessment process increases with it.

Where a Directive requires products and systems to be independently tested, certified, or inspected, this must be done by a “Notified Body” or “Competent Body”. A Notified Body is an organization that has been nominated by a member Government and Notified by the European Commission. The primary role of a Notified Body is to provide services for conformity assessment on the conditions set out in the New Approach Directives in support of CE marking. This typically means assessing the manufacturers conformity to the essential requirements listed in each Directive. Conformity assessment can be inspection, quality assurance, type examination or design examination, or a combination of these.

According to [the GPSD](#) post-market inspection is the general rule. Therefore, as a main principle, monitoring and inspection of consumer products by enforcement authorities takes place after the product is placed on the market. Pre-market certification is, in principle, no longer applied. However, there are all kinds of exceptions to this rule as there are different legal requirements regarding inspection for certain consumer product groups such as medicines, some machines and electronics which employ specific regulatory mechanisms. Pharmaceuticals and food products come under completely different rules such as on pre-marketing assessment and post-marketing obligations on manufacturers and authorities.

Most products covered by New Approach Directives can be self-certified by the manufacturer and do not require the intervention of a Notified Body. To self-certify, the manufacturer must assess the conformity of products to the applicable Directives, and to the standards if applied. The manufacturer may affix the CE marking to products or equipment (and prepare and sign the [Declaration of Conformity](#)) as long as he or she can prove conformity to the applicable requirements. Proof is provided in the Technical File that the manufacturer must compile.

Technical File

A Technical File is the written justification that all aspects of a product are safe. For goods that must bear CE marking, this written justification must be prepared before the product is placed on the market. The Technical File includes information that demonstrates the technical basis for conformity of the product to the applicable requirements of the Directive. The manufacturer must keep the Technical File for ten years after the last unit is placed on the market, unless the Directive provides for a different duration. Any person placing a product on the market but not in possession of the Technical File must, on request from national Surveillance Authorities, 1) state where the Technical File is situated, and 2) produce the Technical File promptly.

Revision of EC Directives

The European Commission is currently reviewing eight Directives:

Sale of consumer goods and guarantees (99/44/EC)	Timeshare (94/47/EC)
Price indication (98/6/EC)	Unfair contract terms (93/13/EC)
Injunctions (98/27/EC)	Package travel (90/314/EC)
Distance selling (97/7/EC)	Doorstep selling (85/577/EC)

All these Directives are based on minimum harmonisation. This means that Member States can go beyond the degree of protection granted to consumers in EC law by introducing or maintaining stricter national consumer rules.

The need for the review stems from the inconsistencies generated by the sector specific approach to the consumer regulatory framework. The Commission fears that ensuing fragmentation may be creating Internal Market problems.

In addition, some of the Directives under review date back to the early 1990s. Hence the need to take stock and assess how these Directives are working in practice, to check whether they are enforced properly and whether new products or marketing techniques are causing any detriment for consumers.

Unfair Commercial Practices Directive and the Directives on Misleading and Comparative Advertising

The Unfair Commercial Practices Directive (UCPD) was adopted on 11 May 2005 and should be implemented by all Member States by 12 June 2007 and applicable by 12 December 2007. The Directive harmonises unfair trading laws in all EU Member States and introduces a general prohibition on traders not to treat consumers unfairly. This prohibition is intended to act as safety-net consumer protection legislation. In particular, the Directive will oblige businesses not to mislead consumers through acts or omissions; or subject them to aggressive commercial practices such as high pressure selling techniques. The Directive regulates commercial practices business to consumers (B2C). The Directive also provides additional protections for vulnerable consumers who are often the target of unscrupulous traders.

The Directives on Misleading and Comparative Advertising aim to protect not only consumers but also competitors and the interest of the public in general against misleading advertising and its unfair consequences. The rules on misleading advertising in UCPD will replace the **B2C rules in the Misleading Advertising Directive**. National rules may allow persons or organisations with a legitimate interest in prohibiting misleading advertising, or controlling comparative advertising, to take legal action and/or go before an administrative authority. Consumers should check which system (judicial or administrative) their national authorities have chosen.

The national courts or administrative authorities have power to order advertising to cease, either for a certain period or definitively. They can also order its prohibition if the advertising has not yet been published, but publication is imminent. A voluntary control by the national self-regulatory bodies can also be carried out. Advertisers should always be able to justify the validity of any claims they make. Therefore advertisers (not consumers) should provide

evidence of the accuracy of their claims.

Unit Prices Directive

The Unit Prices Directive of 1998 requires traders to indicate both the selling price and the price per unit on all products they offer consumers, e.g. the price per litre, kilogram, metre, square metre etc. This information must be unambiguous, clearly legible and easily identifiable. If advertising mentions the selling price it must also indicate the unit price. For products sold in bulk, only the unit price must be indicated. The aim is to facilitate price comparison and improve consumer information. However, for some small retail businesses and for certain forms of itinerant trade, the obligation to indicate the unit price may be an excessive burden. In such cases the national authorities may stipulate that the obligation to indicate the unit price of products, other than those sold in bulk, shall not apply for a transitional period from March 2000 onwards. All Member States have introduced national laws transposing the requirements of the Directive. However, in some areas there are significant differences between Member States.

Unfair Practices Directive

The Directive defines 'Unfair Practices' in a broad sense. In essence unfair practices are any commercial practices which are contrary to the requirements of professional diligence; and materially distort (or are likely to materially distort) the economic behaviour in relation to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

The Directive goes on to make the distinction between "Misleading" and "Aggressive" actions. A misleading practice is defined, in essence, as a commercial practice, which either contains false information so as to make it untruthful, deceitful or likely to deceive the average consumer. Similarly if the practice causes or is likely to cause a consumer to undertake a transaction he would not normally have undertaken, it will be held to be misleading.

An "Aggressive" practice is construed as that which makes use of harassment or coercion in order to impair the average consumer's freedom of choice when making a transactional decision.

Unfair Contract Terms Directive

Contract terms define the rights and duties of the parties who are bound to them. In consumer contracts, sellers and suppliers possess a considerable advantage by defining the terms in advance that are not individually negotiated. Standard term contracts, however, facilitate commercial transactions and if abuses can be prevented, it can also work to the advantage of consumers.

The Unfair Contract Terms Directive therefore introduces a notion of "good faith" in order to prevent significant imbalances in the rights and obligations of consumers on the one hand and sellers and suppliers on the other hand. This general requirement is supplemented by a list of examples of terms that may be regarded as unfair. Terms that are found unfair under the Directive are not binding for consumers. The Directive also requires contract terms to be

drafted in plain and intelligible language and states that ambiguities will be interpreted in favour of consumers.

Member States must make sure that effective means exist under national law to enforce these rights and that such terms are no longer used by businesses.

Sale of Goods and Guarantees Directive

The Directive on Sale of Consumer Goods and Guarantees aims to harmonise those parts of consumer sale contract law that concern legal guarantees (warranties) and, to a lesser extent, commercial guarantees. Its main element is that the seller has to guarantee the conformity of the goods with the contract for a period of two years after the delivery of the goods. Certain standards exist for assessing when conformity can be assumed and when not. If the goods are not delivered in conformity with the sales contract, consumers can ask for the goods to be repaired, replaced, reduced in price or for the contract to be rescinded.

The final seller, who is responsible to the consumer, can also hold the producer liable in their business relationship. Member States can require consumers to inform the seller of the lack of conformity within two months after its discovery. A commercial guarantee must be clearly drafted and indicate what rights it gives on top of consumers' legal guarantees.

Distance Selling Directive

The Distance Selling Directive applies to any consumer distance contract made under the law of an EU-Member State as well as the European Economic Area (EEA). It provides a number of fundamental legal rights for consumers in order to ensure a high level of consumer protection throughout the EU. These include: provision of comprehensive information before the purchase; confirmation of that information in a durable medium (such as written confirmation); consumer's right to cancel the contract within a minimum of 7 working days without giving any reason and without penalty, except the cost of returning the goods (right of withdrawal); where the consumer has cancelled the contract, the right to a refund within 30 days of cancellation; delivery of the goods or performance of the service within 30 days of the day after the consumer placed his order; protection from unsolicited selling; protection from fraudulent use of payment cards; non validity of any waiver of the rights and obligations provided for under the Directive, whether instigated by the consumer or the supplier.

Some types of contracts are excluded from all the provisions of the Directive. The exemptions include contracts for financial services and contracts concluded through an auction. Contracts for financial services are covered by the Distance Marketing of Financial Services Directive 2002/65/EC. Other types of contracts are excluded from the core provisions of the Directive, such as the provision of comprehensible information before the purchase and the right to cancel the contract. These include contracts for services to be performed on a specific date or within a specific period such as hotel room bookings, travel or concert tickets. There are also some exemptions from the right of withdrawal. These will apply unless the consumer and supplier agree otherwise. These exemptions cover, for instance, goods made to the consumer's specifications and perishable goods.

The Commission is currently as mentioned above conducting a review of 8 Directives protecting consumers' economic interests, including the Distance Selling Directive.

Directive on Contracts Negotiated away from Business Premises (so-called Doorstep Selling Directive)

This Directive protects consumers in respect of contracts with traders for goods and services: made at the doorstep, in the consumer's home, place of work or during an excursion organised by a trader for consumers. It also provides for a withdrawal period of no less than seven days enabling the consumer to cancel the contract.

Timeshare Directive

The Timeshare Directive was adopted in 1994 in order to protect consumer's interests including:

- (a) Giving purchasers the right to information in a prospectus before signing a contract and requirements for the content of the contract.
- (b) Once the contract is signed, the consumer has a cooling-off period of at least 10 days, during which he can withdraw from the contract without giving any reason;
- (c) A ban on deposits throughout the cooling-off period

A public consultation on the review of the Directive was launched on June 1st 2006.

Package Travel Directive

The Directive on package travel, package holidays and package tours is designed to protect consumers who contract package travel in the EU. It covers the sale of a pre-arranged combination. The Directive contains rules concerning the liability of package organisers and retailers, who must accept responsibility for the performance of the services offered. There are some exceptions, for example cases of "force majeure", or similar circumstances which could neither be foreseen nor overcome. However, even in these cases the organiser must use his best endeavours to help consumers. The amount of compensation payable may be subject to certain limits but not to an unreasonable degree. Limits may indeed apply under international conventions.

The Directive also prescribes rules on the information that must be given to consumers. It contains specific requirements with regard to the content of brochures, where these are issued. For example, any brochure made available to consumers must indicate clearly and accurately the price, destination, itinerary and the means of transport used, type of accommodation, meal plan, passport and visa requirements, health formalities, timetable for payment and the deadline for informing consumers in the event of cancellation. The Directive also contains provisions on the security to be provided by operators and covering repayment of the price and repatriation of consumers in the event of the operator's insolvency.

Injunctions Directive

An "injunction" is an order granted by a court whereby someone is required to do or to refrain from doing a specified act. The Injunctions Directive establishes a common procedure to allow a qualified body from one country to seek an injunction in another. It aims to control traders that undertake activities in one Member State, which harm the collective interests of consumers in another Member State. A qualified body can bring an injunction for infringements of national provisions transposing the EU Directives. For example, infringements concerning Directives on misleading advertisements, consumer credit, package travel, unfair contract terms, distance selling contracts, sale of consumer goods and

guarantees.

Member States must designate the courts or administrative authorities to rule on proceedings commenced by qualified entities to bring forward an injunctive action. The Directive sets out certain conditions for their operation. The Directive aims to ensure that collective actions to protect consumers can be brought where the business is located and therefore where the solution is most likely to be effective.

Regulation on Consumer Protection Cooperation

On 18 July 2003 the Commission adopted a proposal for a Regulation on Consumer Protection Cooperation. The aim of the Regulation is to link up national enforcement authorities and enable them to take co-ordinated action against rogue traders who abuse the freedom of the Internal Market in order to deceive consumers. It removes existing barriers to information exchange and cooperation and empowers enforcement authorities to seek and obtain action from counterparts in other Member States.

Electronic Commerce Directive

The Directive aims at ensuring legal certainty and consumer confidence by laying down a clear and general framework to cover certain legal aspects of electronic commerce in the Internal Market. It acknowledges the consumer protection measures in other Directives such as Unfair Terms in Consumer Contracts, Distance Contracts, Misleading and Comparative Advertising, Consumer Credit, Package Travel, Package Holidays and Package Tours, Indication of Prices, General Product Safety, Timeshare, Injunctions, Liability for Defective Products, Sale of Consumer Goods and associated Guarantees, and Distance Marketing of Consumer Financial Services.

Product Liability Directive

Under the Product Liability Directive, a producer is responsible, without fault, for any damage caused by a defect in his product, provided a causal link is established between the defect and an injury. The liability also extends in certain cases, to suppliers and importers of a product.

EU Policy Programme

During the last couple of years consumer policy within the EU are being revised to better respond to a more competitive global economy and the demand from citizen for better protection of their consumer interests, and especially in a cross-boarder trade. To that end, a Consumer Programme 2007-2013 was adopted by the Council and the European Parliament on 18 December 2006. The main objectives of the Consumer Programme 2007-2013 are:

1. To ensure a high level of consumer protection, notably through improved information on consumer-related data, better consultation and better representation of consumers' interest.
2. To ensure the effective application of consumer protection rules notably through cooperation between authorities and organisations responsible for the implementation of consumer legislation, information, education and dispute resolution of consumer complaints.

Enforcement

Market surveillance

Enforcement of Community legislation is an obligation on Member States: [Article 10 of the EC Treaty](#) requires Member States to take all appropriate measures to ensure fulfilment of their obligation arising out of the Treaty. Market surveillance is an essential tool for enforcing [New Approach Directives](#), in particular by taking measures to check that products meet requirements of the applicable Directives, that action is taken to bring non-compliant products into compliance, and that sanctions are applied when necessary.

In addition to the implicit obligations contained in the EC Treaty, the Community law contain an explicit requirement for Member States to carry out market surveillance activities. The principle of subsidiarity applies, and it is for Member States to determine the administrative structures used to fulfil their obligations in this field.

Surveillance and Enforcement Authorities

Market surveillance is the responsibility of public authorities. This is, in particular, to guarantee the impartiality of market surveillance operations. Each Member State can decide upon the market surveillance infrastructure, for example there is no limitation on the allocation of responsibilities between authorities on a functional or geographical basis as long as surveillance is efficient and covers the whole territory. As a result, the legal and administrative market surveillance infrastructures differ from one Member State to another. This requires, in particular, that efficient administrative cooperation between competent national authorities is in place so that an equivalent level of protection can be ensured throughout the Community, in spite of the competence for market surveillance being limited to each Member State's territory.

Market surveillance authorities should have the necessary resources and powers to conduct their surveillance activities. This is to monitor products placed on the market and, in cases of non-compliance, to take appropriate action to enforce conformity. As regards personnel resources, the authority needs to have, or have access to, a sufficient number of suitably qualified and experienced staff, with the necessary professional integrity. To guarantee the quality of the test data, the testing facility used by the authority should comply with the relevant criteria of the [EN 45001 standard](#). The authority should also be independent, and carry out its operations in an impartial and non-discriminatory way. Further, the authority should carry out market surveillance respecting the principle of proportionality, for example action must be in accordance with the degree of risk or non-compliance and the impact on the free circulation of products may not be more than is necessary for achieving the objectives of market surveillance.

The surveillance authority may subcontract technical tasks (such as testing or inspection) to another body, provided that it retains the responsibility for its decisions, and provided there is no conflict of interest between the other body's conformity assessment activities and its surveillance tasks. In doing so the authority should exercise great care to ensure that the impartiality of the advice it receives is beyond reproach. The responsibility for any decision to be taken on the basis of such advice shall reside in the surveillance authority. As a general rule, it is inappropriate for notified bodies to be responsible for market surveillance. In order to avoid a conflict of interest it is necessary to make a clear distinction between conformity

assessment (which takes place before the product is placed on the market) and market surveillance (which takes place after the product has been placed on the market).

As an exception, where a notified body and a market surveillance authority come under the same superior authority in a Member State, the lines of responsibility should be so organised that there is no conflict of interest between these activities. New Approach Directives include certain provisions that require Member States to inform the Commission or the other Member States, but they usually say nothing on the confidentiality or transparency of information obtained during market surveillance operations. Consequently, rules on confidentiality are based on the national legal systems, and therefore vary between Member States. However, information on activities underway that concern individual economic operators should generally be considered as confidential. An exception to this may be justified where the health and safety of consumers is subject to serious and immediate danger.

Voluntary actions by manufacturers are especially encouraged in law as an alternative to formal enforcement actions. Dialogue with manufacturers, when possible, as well as allowing them the opportunity to take steps to correct any faults before applying legal action are considered to be more effective and produce better results than direct enforcement of consumer product legislation.

International Consumer Protection and Enforcement Network (ICPEN)

The ICPEN is a worldwide network of national authorities with the aim of strengthening and improving the enforcement of consumer protection legislation (except product safety and the prudential regulation of financial institutions). It meets twice a year to discuss these enforcement issues, exchange information and improve international cooperation between the countries involved. A sub-group [“ICPEN-Europe”](#) has been set up by the Commission to improve European co-operation and prepare for the global meetings.

Standards, Certification and Notification

Harmonized Standards

EU provides harmonized standards that manufacturers can use to satisfy the requirements of the Directives. Technically speaking, the use of a Harmonized Standard is voluntary. That is, a manufacturer can select to use a Harmonized Standard, or elect to use a non-Harmonized Standard to meet essential requirements. When using a Harmonized Standard, however, the manufacturer is presumed in conformity with the law. On the contrary, using a standard that is not a Harmonized Standard will impose additional responsibilities. The use of anything but a Harmonized Standard places a burden of proof upon the manufacturer that the product meets essential requirements. This proof may be provided by the manufacturer's Technical File, by the employment of a third party (consultant, testing house, etc.), or by a combination of the two. Harmonized Standards are standards that support European legislation. They (1) have been mandated by the European Commission, (2) have been developed by the European Standards Bodies above, (3) address essential requirements of [New Approach Directives](#); and (4) notification of their development has been published in [the Official Journal of the European Communities](#).

The European system for harmonized standards provides for three standards bodies to create standards on a Europe-wide level: (1) [The European Committee for Standardization \(CEN\)](#); (2) [the European Committee for Electrotechnical Standardization \(CENELEC\)](#); and (3) [The European Telecommunications Standards Institute \(ETSI\)](#). CENELEC activities are in the electrotechnical sector, while ETSI specializes in telecommunications. All other sectors are covered by CEN.

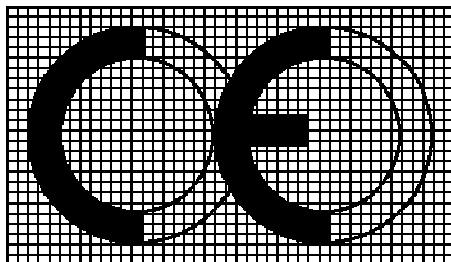
Presumption of conformity is a legal concept surrounding Harmonized Standards that denotes the relationship between the legislative and standardization processes. The European Commission and the European Standards Bodies collaborate to produce Harmonized Standards. They enter into a contractual relationship, with the Commission providing financial support when needed. The contract (or mandate) stipulates that the standards body will produce a standard that will provide a technical solution, or a technical interpretation, of an essential health and safety requirement. When the standard is completed and the conditions of the Commission's mandate are met, the Commission publishes the notice of its completion in the Official Journal of the European Communities. Once the notice is published, the standard takes on the presumption of conformity mantle. A manufacturer, therefore, using a Harmonized Standard in the design and/or production of the product, is presumed to be in conformity with the essential requirements of the law.

There is a vast body of European Standards that is not mandated by the Commission; and these standards are not necessarily directed toward essential requirements. In theory, their use is voluntary, just as the use of harmonized standards is voluntary. These standards may or may not address health or safety aspects of products. They may define other characteristics, such as durability, appearance, quality levels, or even cultural preferences. They may be test methods, or measurement guides.

If products are unregulated at the European level, the European Court of Justice has decreed that Member States must recognize them in each other's territory (i.e., acceptance in one Member State means acceptance in all) unless there are proven health or safety restrictions. This acceptance principle is known as mutual recognition. To this date, however, products outside of the food sector have not enjoyed a liberal and free exchange under the mutual recognition principle).

CE-Marking

The ["New Approach" Directives](#) establish a uniform marking system known as the CE-Marking.



CE marking is a declaration by the manufacturer that the product meets all the appropriate provisions of the relevant legislation implementing certain EU Directives. CE marking gives companies easier access into the European market to sell their products without adaptation or

rechecking. CE marking only applies to products within the scope of New or Old Global Approach Directives. The European Commission's "[Blue Guide](#)" ([Guide to the Implementation of Directives Based on the New Approach and Global Approach](#)) lists Directives where the CE Marking will be applicable. It is available for download from the Commission website⁵.

RAPEX

The [Directive on General Product Safety](#) establishes a notification system on dangerous products - the [RAPEX](#) system - for the rapid exchange of information between EU Member States and the European Commission. This RAPEX system provides that when a Member State adopts emergency measures to prevent, restrict or impose specific conditions on the possible marketing of a product by reason of a serious and immediate risk presented by the said product to the health and safety of consumers, it shall forthwith inform the Commission.

The system concerns products intended for consumers which are supplied whether for consideration or not in the course of a commercial activity and whether new, used or reconditioned. However, the system does not apply to pharmaceutical products, to animals, to products of animal origin and to radiation emergency situations, which are subject to equivalent notification procedures.

The rapid exchange system comes into operation when a product is shown to present a serious and immediate risk for the health and safety of consumers. This risk is assessed on a case-by-case basis by the national authorities. When a serious and immediate risk has been identified, the authority consults, where possible and appropriate, the producer or the distributor in order to obtain information on the product and the nature of the hazard. This must make it possible to take measures to ensure consumer protection while minimising interference with trade.

When a Member State takes measures to eliminate a risk whose effects may extend beyond its territory, it must immediately inform the Commission. The Commission verifies this information and circulates it to the other Member States which, in turn, immediately inform the Commission of any measures adopted. The Commission may also contact the authorities of the country presumed to be the country of origin to carry out the necessary verifications.

In order for the system to work smoothly, the revised [GPSD](#) provides for the establishment of a European Product Safety Network to organise administrative co-operation between the enforcement authorities of the member states, which are responsible for the RAPEX system.

EU-integration

Ukraine has set up the long-term objective of joining the European Union. European integration has implications for all policy sectors. The consumer sector is specifically affected as it has implications for trade and the free movement of goods and services.

In March 2004, 10 Central and Eastern European countries joined the European Union. This enlargement was followed by the accession of Bulgaria and Romania on the 1 January 2007. Croatia and Turkey are two new candidate countries with which accession negotiations have started (in October 2005). The Former Yugoslav Republic of Macedonia is a candidate country with which accession negotiations have not yet started.

⁵ <http://ec.europa.eu/enterprise/newapproach/legislation/guide/index.htm>

In order to become a Member State, candidate countries will have to accept the *acquis* of the Union. In all areas of the *acquis*, the candidate countries must bring their institutions, management capacity and administrative and judicial systems up to EU standards, both at national and regional level. This will allow them to implement the *acquis* effectively upon accession and, where necessary, to be able to implement it effectively in good time before accession. This requires a well-functioning and stable public administration built on an efficient and impartial civil service, and an independent and efficient judicial system.

EU signs so-called Association Agreements with the candidate countries, which includes harmonization of consumer policy. The requirements that the candidate countries in Central and Eastern Europe had to fulfil are in detail specified in [Chapter 23 of the Annex to the EU 1995 White Paper on the preparation of the associated countries of Central and Eastern Europe for integration into the Internal Market](#). For the purposes of screening and the subsequent negotiations, the *acquis* is broken down into a number of chapters, each covering a specific policy area. [For Consumer Policy this is Chapter 28](#).⁶

For the acceding countries, the need to harmonize legislation to the *acquis* has in general been a positive force. Consumer legislation has been developed and enforcement mechanisms put in place. But, as have been mentioned above, the *acquis* does not offer a comprehensive framework for consumer policy. The focus of the *acquis* is on issues with implications for the Internal Market. At large, EU has been reluctant to regulate consumer issues that are purely national. In addition, EU consumer policy has been developed organically and often in response to topical issues for the old EU Member States. As a consequence, package travel and time-share holidays are addressed in Directives while merely national issues as housing, which is not the least an important issue in a country like Ukraine, is not addressed.

Furthermore, the European Commission (EC) has advocated that acceding countries should enclose consumer protection policy in an inclusive single piece of legislation. This has led to some controversy, for instance in Hungary where the government opposed the idea of adopting a single act. The position of the EC can indeed be questioned as many old Member States have opted to mainstream consumer policy through different branches of legislation. In Sweden for example, consumer protection is dealt with in three branches of the legislation: civil legislation, market legislation and procedural legislation.

The bottom line is that every Member State, or candidate country, has to ensure that it has a comprehensive consumer protection system, which addresses issues relevant to that country. The *acquis* has after all in the consumer sector been drafted to provide minimum harmonization to protect the Internal Market from divergences between countries that hamper the free movement. Or as Weatherill puts it. “the rationale behind consumer protection has always been to “level the playing field” and not to protect consumer as an end in itself”⁷.

Information to Consumers and Consumer Education

⁶http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/negotiations_croatia_turkey/chapters_en.htm

⁷ EU Consumer Law and Policy, Weatherill, Stephen, MA: Edward Elgar Publishing, 2005

UN and Consumer Education

In 1986, after many years of lobbying by the international consumer movement, the Economic and Social Committee of the United Nations unanimously adopted the [Guidelines for Consumer Protection](#). Chapter F of these guidelines deals with consumer education and information programmes. Paragraph 31 states: “Governments should develop and encourage the development of general consumer education and information programmes, bearing in mind the cultural traditions of the people concerned” and paragraph 32: “Consumer Education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects”.

EU and Consumer Education

In 1975 the European Council of Ministers of Education adopted a [resolution on Consumer Education in Primary and Secondary schools](#): “The competent authorities in the Member States should ensure the gradual introduction of Consumer Education into school curricula at primary and secondary level so that Consumer Education is systematically provided throughout the period of compulsory education; The introduction of Consumer Education into school curricula does not necessarily entail the creation of a new subject, but could be included in the framework of a range of existing subjects, and may benefit from a multidisciplinary approach taking account of the whole range of consumer matters; To be relevant, the introduction of this new aspect should take account, both as regards contents and methods, of the age of the pupils concerned, their level of maturity and, if possible, their social and economic background, particularly as regards to the underprivileged. Consumer education should set itself the objective of influencing behaviour and endeavour to be practical and specific”. A second resolution in 1995 dealt with Consumer Education and Consumer Information. It recommended the concept of life-long learning and widened the target for education to adult consumers.

Finally, according to the [EC Treaty Article 153](#), (ex Article 129a): “In order to promote the interests of consumers and to ensure a high level of protection, The Community shall contribute to protecting health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.” This means that Consumer Education is now included in the general objective of consumer protection and it becomes a right for consumers, and an objective to be fulfilled jointly by the European Union and the Member States. Not least Consumer Education must be taken into account within other Community policies and activities, such as in the fields of education or vocational training, which are the most obvious ones.

Consumers International and Consumer Education⁸

Consumers International is a federation of consumer organisations dedicated to the protection and promotion of consumers' rights worldwide through empowering national consumer groups and campaigning at the international level. It currently represents more than 230 organisations in 113 countries. In 2000, Consumers International launched a report named *Educating Tomorrow's Consumers Today* targeted at Governments and NGOs in Central and Eastern Europe.

In the report *Educating Tomorrow's Consumers Today*, Consumers International

states that: "Governments should develop or encourage the development of general consumer education and information programmes, including information on the environmental impacts of consumer choices and behaviour and the possible implications, including benefits and costs, of changes in consumption, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low income consumers and those with low or non-existent literacy levels. Consumer groups, business and other relevant organizations of civil society should be involved in these educational efforts.

Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects.

Consumer education and information programmes should cover such important aspects of consumer protection as the following:

- (a) Health, nutrition, prevention of food-borne diseases and food adulteration;
- (b) Product hazards;
- (c) Product labelling;
- (d) Relevant legislation, how to obtain redress, and agencies and organizations for consumer protection;
- (e) Information on weights and measures, prices, quality, credit conditions and availability of basic necessities;
- (f) Environmental protection;
- (g) Efficient use of materials, energy and water.

Governments should encourage consumer organizations and other interested groups, including the media, to undertake education and information programmes, including on the environmental impacts of consumption patterns and on the possible implications, including benefits and costs, of changes in consumption, particularly for the benefit of low income consumer groups in rural and urban areas.

Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.

Bearing in mind the need to reach rural consumers and illiterate consumers, Governments should, as appropriate, develop or encourage the development of consumer information programmes in the mass media.

Governments should organize or encourage training programmes for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer information and education programmes."⁹

⁹ http://www.consumersinternational.org/Shared_ASP_Files/UploadedFiles/0D6B9FBC-2581-4130-BEE7-4E46D9FA794F_Doc48.pdf

The European Union has launched several consumer information and education initiatives, often co-financed together with the Member States. Here follows information about some of the major initiatives of the Union

European Consumer Centres Network

The European Consumer Centres Network (ECC-Net) is an EU-wide network to promote consumer confidence by advising citizens on their rights as consumers and providing easy access to redress, particularly in cases where the consumer has purchased something in another country to his/her own (cross-border). The network has been created by merging two previously existing networks: the European Consumer Centres or '[Euroguichets](#)', which provided information and assistance on cross-border issues; and the European Extra-Judicial Network or '[EEJ-Net](#)' which helped consumers to resolve their disputes through alternative dispute resolution schemes ([ADRs](#)) such as mediators or arbitrators.

The aim of the European Consumer Centres is to provide consumers with a wide range of services, from providing information on their rights to giving advice and assistance with their complaints and the resolution of disputes. The ECC-Net is co-financed by the Member States and the EU. Currently there are centres in 26 countries across Europe with another planned to open in 2006.

The European Consumer Centres provide the following services:

- They inform consumers about the opportunities offered by the Internal Market;
- They advise individuals facing a consumer related problem and support them in pursuing cross-border complaints;
- They advise on out-of-court-settlement procedures for consumers throughout Europe;
- They provide consumers with easy and informed access to such procedures cross-border;
- They co-operate with each other and with other European networks such as the [FIN-NET \(Financial Network\)](#), [SOLVIT](#) and the European Judicial network in civil and commercial matters;
- They provide information on EU and national legislation and case law;
- They conduct cross border comparisons of such things as prices, legislation and other issues of consumer concern;
- They provide the European Commission with important "grassroots" information on consumer concerns.

The European Consumer Diary¹⁰

The Europa Diary is an EU-wide initiative to inform young people of their rights, increase their awareness and to enable them to make more informed decisions as consumers. It is aimed at students between the ages of 15 and 18. It exists in 20 languages and has been adapted to the national contexts of all Member States. Two editions of the Europa Diary have already been published: 560.000 copies of the first edition (2004/2005), covering 15 Member

¹⁰ The text is based on information from http://ec.europa.eu/consumers/cons_info/consumer_diary_en.htm

States, were distributed to 3.979 schools; 918.700 copies of the second edition, covering 25 Member States, were distributed in more than 7.112 schools in May/June 2005.

The specific aim of the Europa Diary is to encourage young people in the European Union to become more aware as consumers, by getting them to work and reflect on consumer-linked themes in teams under adult guidance on a regular basis. An interim evaluation was performed on the information collected up to the end of June 2005. This evaluation show that young people do not directly perceive a strong need for information on consumer related themes. Many of them are confident that they know enough to be careful and critical when purchasing goods or services. However, reading the Diary made them realise that their knowledge might be incomplete or even insufficient.

Inter-active Consumer Education Project¹¹

The Commission has developed, in co-operation with higher education institutions, certain web-based consumer education tools. They are targeted at trainers and others multipliers in consumer education as well as at the "informed" consumer. They go beyond the simple provision of general information, to include learning exercises and other interactive material. The first two modules of this long-term education project are aimed at educating adults. They tackle: (i) basic consumer rights, the advantages of the Internal Market and redress possibilities in case of problems, and (ii) financial services (comparing prices, asset allocation, understanding products and services, etc.).

These modules focus as far as possible on the cross-border aspects of each of the topics and the approach is based on the "problem solving" method recommended by adult education practitioners.

Consumer Organisations

Consumer International¹²

Consumers International (CI) supports, links and represents consumer groups and agencies all over the world. It has a membership of over 230 organisations in 113 countries. Consumers International was founded in 1960 as the International Organisation of Consumers Unions (IOCU) by a group of national consumer organisations. The group recognised that they could build upon their individual strengths by working across national borders. The organisation rapidly grew and soon became established as the voice of the international consumer movement on issues such as product and food standards, health and patients' rights, the environment and sustainable consumption, and the regulation of international trade and public utilities.

Consumers International has four office worldwide in Accra (Ghana), Kuala Lumpur (Malaysia), London (UK) and Santiago (Chile).

One of the key tasks of Consumer International is to promote understanding of people's

¹¹ The text is based on information from http://ec.europa.eu/consumers/cons_info/project_en.htm

¹² The text is based on information from <http://www.consumersinternational.org/>

rights and responsibilities as consumers. These are:

- [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.](#)

Consumers International is a democratic organisation governed by a Council (board), elected by full members at CI World Congress, held every three years. The Council consists of a President, elected directly, and 19 members. The Council in turn appoints an eight-member Executive to which some responsibilities are delegated.

European Consumers' Organisations

European Consumers' Organisations are federations of national consumer organisations from the EU. They make the voice of the European consumer heard and try to influence, in the consumer interest, the development of EU policy and to promote and defend the interests of all European consumers. At present, two European organisations are eligible for receiving Community funding to help them to carry out their activities: ANEC and BEUC.

ANEC¹³

ANEC is the European consumer voice in standardisation, representing and defending consumer interests in the process of standardisation and certification, also in policy and legislation related to standardisation. ANEC was set up in 1995 as an international non-profit association under Belgian law. The organisation represents consumer organisations from the European Union Member States and the [EFTA](#) countries. The General Assembly of ANEC is composed of one national member per country, nominated jointly by the national consumer organisations in their country. The European Commission and EFTA fund ANEC, while national consumer organisations contribute in kind.

The Brussels based Secretariat co-ordinates a network of more than 200 consumer representatives across Europe. ANEC's experts contribute directly to the work of over 80 Technical Committees, Working Groups and political bodies of the European and international standards organisations.

BEUC¹⁴

BEUC was created on 6 March 1962 by the consumer organisations of Belgium, Luxembourg, France, the Netherlands, Italy and Germany. After working together for a number of years, these organisations decided to create a European association, based in Brussels, right at the heart of Community policy. BEUC was a pioneer, one of the first

¹³ The text is based on information from <http://www.anec.org/>

¹⁴ The text is based on information from <http://www.beuc.org/>

lobbying organisations to set up base in the European capital in a bid to influence the decision-making process. Many others followed, and the number of lobbyists rose exponentially to the present-day figure of over 15,000. Most of these lobbying organisations are there to protect commercial, industrial and farming interests. While these groups are entitled to put forward their points of view, the intense pressure brought to bear on decision-makers highlights the need for BEUC to have a strong presence on the Brussels scene. To do this, BEUC receives funding from members in addition to a grant from the European Union. This enables BEUC to continue the task it has been pursuing for the past 45 years, of promoting basic consumers rights.

BEUC investigates all European Union decisions, programmes and developments liable to affect consumers. In addition to lobbying activities, BEUC also formally represents consumers within the decision-making process. BEUC has a seat on the [European Consumer Consultative Group \(ECCG\)](#) and experts from the member organisations participate in various European Commission advisory groups, such as the Agriculture DG's agricultural advisory groups or the Internal Market DG's Payment Systems Market Group (PSMG). In the European Parliament, BEUC has established relations with MEPs, notably via the Health and Consumer Intergroup, for which BEUC provides the secretariat jointly with the European Public Health Alliance (EPHA). The aim of the Intergroup is to bring together MEPs, experts from industry, and consumer and public health organisations, to discuss issues on the European Parliament agenda.

Outside Europe, BEUC maintains close contacts with its "big sister", the international consumer organisation, Consumers International.

National consumer organisations in EU Member States

In 2005, the National authorities in consumer affairs provided information on their national consumer organisations; this information can be found on the web page of the European Commission.¹⁵

The consumer organisation National Consumer Council from Great Britain has developed [guidelines for involving consumers in public decision-making](#).¹⁶ The organisation defines four approaches for consumer organisations to utilize in order to involve consumers in policy-making.

Gathering information

It is vital for policy-making and service provision to be fully informed by consumers' views and experiences. Information is critical to gaining a better understanding of consumers' views and experiences. It enables service providers to find out from the sharp end of consumer experience if standards are made to meet the range of people's needs. Some information is readily available as it is volunteered by consumers when they make complaints, or through informal contacts with an organisation's staff. Other information may need to be actively sought by policy-makers or service providers through research. Research methods can be based on a quantitative approach - for instance via opinion polling - or qualitative information on people's views through focus groups.

¹⁵ http://ec.europa.eu/consumers/cons_org/associations/index_en.htm#national

¹⁶ Involving consumers – everyone benefits, 2002, National Consumer Council

Consultation

Consultation goes beyond information-gathering and should provide a means for consumers and other interested parties to be involved in the processes for policy-making before final decisions are taken. Consultation is one of the key ways in which government departments and other public bodies can make themselves accountable. A range of methods exists for consulting consumers, including written consultation documents, means such as web-based forums and online involved in consultation processes are consumer representative organisations rather than individual consumers. However, public bodies are recognising the need to consult more widely in order to involve individual consumers in the process.

Participation

Participation is about individual consumers or consumer representative organisations being directly involved with the processes for decision-making and service provision. Our research shows that consumers are most likely to want to participate directly in issues that have an immediate and local impact on their lives. In general, effective consumer participation requires that consumers can take part in policy-making in ways that enable them to shape the process as well as being involved in it. Methods of enabling consumers to participate in policy-making include participation in panels, committees or forums set up specifically for that purpose bodies which also include other stakeholders networks. Deliberative research also offers a variety of methods for consulting people, such as citizens' juries or small workshops, where consumers have the opportunity to discuss specific proposals in more detail. Some consultation processes can also offer a means of participation, depending on the nature and length of the process.

Representation

“Effective representation ensures that the needs of all people are taken into account in the formation of policies that directly affect their lives. By magnifying the voice of the individual, representation contributes to good governance and the achievement of social justice. It affords better and more durable decisions. True representation is more than simply involving consumer experts on panels or public consultations. It requires permanent channels for input, the expectation that consumer views will be taken into account and the recognition that it is essential to good decision-making.”¹⁷

Realistically, it is not possible for individual consumers to participate directly all the time in all the issues that affect them. Participating in a meaningful way in policy-making processes often require detailed work to analyze the impact of future developments for consumers. Quite understandably, many people cannot do this because of other demands in their lives. As a result, systems for consumer representation are needed to ensure that organisations, or individual consumers nominated by consumer representative organisations or other bodies, are there to represent consumers' interests in committees or panels set up by providers or policy-makers. Organisations that represent consumers' interests include organisations or consumer councils representing consumers' interests in particular sectors utilities people with disabilities or elderly people.

¹⁷ Consumers International, Voices for change – the consumer's right to representation World Consumer Rights Day, 2002.

Complaint Mechanisms and Redress

Most consumers are hesitant to take consumer disputes to formal courts, especially when the value of the dispute is low. Therefore, alternative dispute resolution (ADR) is popular in EU-countries to solve consumer-business disputes. These systems vary considerably from Member State to Member State.

In order to make the ADR more accessible, in 2001 the European Extra-Judicial Network, EEJ-Net, was founded on the initiative of the European Commission. EEJ-Net included EU-15 as well as Norway and Iceland. Contact points and ADR bodies were included in the network. The task of the contact points was to inform consumers about existing ADR bodies, help consumers to report the matter and in cooperation with the contact point in the seller's country, to find the right dispute resolution body. Since 2005 EEJ-net has merged with the network European Consumer Centre, ECC and is now known as European Consumer Centre Network, ECC-Net.

The Commission has been active in promoting the development of Alternative Dispute Resolution. Two **Recommendations**¹⁸ adopted by the European Commission have established quality criteria that each ADR scheme should offer to its users. In addition, the Commission's proposal for a European Directive on Mediation in Civil and Commercial Matters aims to ensure a sound relationship between the mediation process and judicial proceedings, by establishing common EU rules on a number of key aspects of civil procedure.

Many problems that consumers face can often be resolved amicably and free of charge by contacting the trader/supplier or service provider directly. The European Commission has developed a specific complaint form to help both buyers and sellers resolve disputes between them. This form can be used to resolve problems with suppliers from any of the countries in the European Union and is available in 11 languages.¹⁹

ADR in Sweden

The Swedish National Board for Consumer Complaints (ARN) is a public authority that functions roughly like a court. Its main task is to impartially try disputes between consumers and business operators. The Board submits recommendations on how disputes should be resolved, for example that the business operator shall repair the defect on a product. The Board's recommendations are not binding, but the majority of companies nonetheless follow them.

The process at the Board is purely in writing. If the matter is not rejected for formal reasons, the Board asks the company to comment on the consumer's claims. The consumer in turn has an opportunity to see and comment on the company's response. Both parties have the right to submit written evidence in the form of e.g. contracts or certificates of inspection. The dispute is usually settled at a meeting with the department under which the matter falls. The parties are not entitled to be present at the meeting. The Board may consider consumer disputes between a group of consumers and a business operator if:

1. There are several consumers, who may be assumed to have claims against the business operator based on fundamentally similar grounds,
2. The disputes concern matters that may be considered by the board, and

¹⁸ http://ec.europa.eu/consumers/redress/out_of_court/adr_recommendations_en.htm

¹⁹ http://ec.europa.eu/consumers/redress/compl/index_en.htm

3. A consideration of the disputes is justified from the public viewpoint.

ADR in Poland

Consumer conciliation courts (CCC) was created in 1991 by the Trade Inspection (TI) - a governmental body - in co-operation with two NGOs Consumer Federation and Consumer Institut of Quality. Today 35 CCCs are operated by 17 regional branches of TI and their local sections. The NGOs nominate permanent arbitrators to CCCs for the period of four years. Each case is decided by an arbitration panel, composed of three arbitrators. Each party appoints one arbitrator from the permanent list available in the TIs' offices. It is not obligatory for the parties to be represented by a lawyer, yet each party must be given full opportunity to present their case. Parties may appoint witnesses and experts from the list of experts held by the TI.

The CCCs can decide about each case concerning the dispute between a consumer and an entrepreneur arising out of sales contracts or contract for the provision of services, concluded between a particular consumer and an entrepreneur. However, according to the legal regulations few sectors are excluded from this scope. The value of the claim is not limited. The arbitration procedure is voluntary for both parties. Access to the CCCs is free of charge. Consumers have to bear only the costs of experts/expertise (but they are reimbursed once the verdict is favorable for consumer).

ADR in Germany

Germany is home to several hundred institutions (approximately 500) providing alternative dispute resolution services. The high number is explained by Germany's federal structure. The jurisdiction of many institutions – for instance those in the area of skilled crafts, automobile trade or retail – is limited to a single state or to one or a few municipalities. In contrast to this, many institutions in the financial services sector (including the insurance industry) and the area of telecommunications cover the whole country. The terms used to denote the different alternative dispute resolution bodies vary depending on the "Bundesland" (federal state) as well the branch of industry. Usually, one of the following terms will be employed: "Schiedsstelle", "Schlichtungsstelle", "Einigungsstelle", "Vermittlungsstelle", "Gütestelle" or "Ombudsmann".

The ADR-tribunal usually consists of only one member (most commonly this will be a fully qualified lawyer with special knowledge of the particular industry). In some cases, the ADR tribunal consists of three or five members with one fully qualified lawyer as chairman, and members of the relevant industry and/or consumer associations as assessors. The ADR-bodies are not set up with the aim of completely replacing court litigation. The applicant can terminate the proceedings anytime without having to state his or her reasons for the termination. The system of alternative dispute resolution is usually based on the voluntary participation of the disputing parties. In certain cases, however, state law of the "Bundesländer" can prescribe an obligatory attempt at conciliation ("Güteversuch") as a prerequisite for subsequent court proceedings (see § 15a of the Introductory Law to the German Code of Civil Procedure [EGZPO]). The obligatory attempt at conciliation is also limited to parties residing in the same federal state ("Bundesland") or court district.

Therefore, in cross-border cases, consumers are never obliged to engage in an ADR procedure as a prerequisite for subsequent court proceedings.

Consumer Protection and Consumer Societies in Ukraine

Regulatory Framework

The Ukrainian Constitution puts the main responsibility for protecting consumers on the state, which should:

”...protect[...]the rights of consumers, exercise[...]control over the quality and safety of products and of all types of services and work, and promote[...]the activity of public consumer associations.”²⁰

Furthermore, the Constitution grants everybody, including foreigners and stateless people who are legally in Ukraine²¹, the right to:

”information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret.”²²

The state should also, according to the Constitution, promote market competition and curb unlawful market monopolies and unfair competition.²³ These articles of the Constitution reflect a mixed approach to consumer protection with both paternalistic and consumer rights-based elements. However, as obvious from the further chapters, the Ukrainian regulatory framework is rather paternalistic in the practical application of the law and there is a tendency from the state to prioritise state control over producers and distributors rather than promote consumer rights and their effective protection.

As in the majority of Eastern and Central European countries, Ukraine adopted a specific law on consumer protection in the 1990th. In fact, Ukraine was one of the first countries in the region to adopt a Law “on consumer rights protection” in 1991 (further the Law).²⁴ The Law has been revised and amended several time with the last amendments dated December 2005. The last amendments where partly aimed at harmonizing the law to the *acquis*, and specifically to the EC Directives on Distance Selling, Doorstep Selling and Product Liability.

Alongside with positive changes, the amendments have brought changes that have been less popular among consumer rights advocates in Ukraine. The most noticeable example is that it has narrowed consumers’ rights when purchasing damaged goods.²⁵ Article 8th of the Law regulates consumer’s rights if purchased goods are of improper quality. The amended version

²⁰ Constitution of Ukraine, Article 42, 4th paragraph.

²¹ Ibid, Article 26, 1st paragraph.

²² Ibid, Article 50, 2nd paragraph.

²³ Ibid, Article 42, 2th paragraph.

²⁴ Czech Republic 1992, Poland 1990, Hungary 1997, Bulgaria 1999, Estonia, 1994, Latvia 1992, Lithuania 1994.

²⁵ Law “on consumer rights protection”, paragraph 1 of Article 8 (the right of a consumer in case of buying low-quality goods).

of the Article introduces the concept of “substantial defect” of goods and services. The level of “substantiality” is not specified in the Law, neither is the procedure of its assessment. The Law also states that there should be independent testing available, but there is no such system and the only existing system is the state testing system, which is underfinanced. Thus, to prove the extent of defect, the consumer has to bear the cost or to turn to the seller’s service centre, where the tester’s neutrality could be justified questioned.²⁶

The Law states that a consumer is a physical entity that purchases, orders, uses or intends to purchase or order a product or service for his or hers own needs without direct relation to commercial activities.²⁷ Thus, a consumer is a physical entity. However, the Ukrainian legislation is ambiguous on who constitutes a consumer. According to the Law of Ukraine “On electric energy” (Article 1), both physical entities and economic entities can be consumers of electric energy. In the Law of Ukraine “On natural monopolies” (Article 1), physical and legal entities are named consumers. Such ambiguous interpretation of the notion of “a consumer” takes place in other legislative acts as well, for example, in the Law of Ukraine “On telecommunications”.

Therefore, the notion of “a consumer” in practice can have double interpretation and can cause confusion.

Article 4 of the Law lists the seven major rights of consumers:

<ul style="list-style-type: none"> • To protect their rights by the state • To relevant quality of products and services • To product safety • To information 	<ul style="list-style-type: none"> • To reimbursement of harm • To appeal to court • To integration into non-governmental organizations
---	--

This list is not exhaustible, since paragraph 2 of Article 4 of the Law refers to other rights determined by legislation on consumer rights protection.

According to the Law “On Standards, Technical Regulations and Conformity Assessment Procedures”, conformity assessment is an activity that results in a guarantee that a product confirms to the requirements established by the legislation. Conformity assessment is used on the pre-market stage of introducing products into the market and is performed by the manufacturer himself or with the involvement of the third party – a certification body.

Mandatory and voluntary performance of conformity assessment is foreseen by the Law. Conformity assessment in the legislatively regulated sphere is mandatory for manufacturers

²⁶ In addition, consumer rights advocates have argued that the narrowing of consumer rights in the revised law violates the Ukrainian Constitution Article 22 that states that “no legal act should narrow the rights and freedoms of Ukrainian citizens”.

²⁷ A definition of the consumer used by the UK National Consumer Council is ‘everybody in society in one part of their life: that is, as the purchaser or user of goods and services, whether privately or publicly supplied’. On this basis, the individual’s role as a consumer is distinct from her or his role as a producer. Put into operational terms, this concept might be rephrased as ‘the consumer is an individual who is offered, buys or uses goods and services, whether publicly or privately supplied, for personal or family use’.

and suppliers. In the legislatively regulated sphere conformity assessment is performed to correspond to the requirements of technical regulations on conformity assessment according to the procedures set up in it.

For the period before introducing the technical regulations on conformity assessment of production in Ukraine, conformity assessment is used through the procedure of mandatory certification for products by a Decree of the Cabinet of Ministers of Ukraine “On standardization and certification”

Standards, Certification and Notification²⁸

General terms of product quality and safety are established through the procedures of standardization and certification outlined in the Law “On Standards, Technical Regulations and Conformity Assessment Procedures”. This law indicates the obligation of manufacturers and sellers of goods and services to offer and to provide only services that are safe. Also, the law provides the frameworks for formal requirements that have to be fulfilled before a product is placed on the market. A manufacturer has to deliver two basic sets of technical files²⁹ to the State Consumer Standard (SCS) which along the Soviet GOST-system provide detailed information about how and of what a product is produced. Unfortunately, third parties like NGOs have no access to these documents which SCS keep.

According to the [Decree of the Cabinet of Ministers of Ukraine “On standardization and certification”](#), the State Committee on Technical Regulation and Consumer Policy (Gosstandard, SCS) as the national certification body.

SCS: (i) specifies the main principles, structure and rules of the certification system in Ukraine, (ii) approves the product lists subject to mandatory certification, indicating to which normative documents certification is performed, and (iii) controls the abidance of rules for certification and certified products and informs interested organizations and society about the results of certification.

SCS and appointed certification bodies are legally authorized to perform mandatory certification. Around 118 certification bodies perform certification under the so-called [UkrSEPRO-system](#), which:

- appoints bodies on product (work, service) certification,
- prepares auditors and certifies them,
- performs registration of conformity certificates (certificates of recognition),
- keeps the Register of certificates of enterprises that received the certificate on quality management system,
- keeps the Register of manufacture certificates, issued by the enterprises,
- provides the functioning of organizational-and-methodic certification base,
- organizes the development of certification rules for homogenous production (works, services).

The State Enterprise “Ukrainian Scientific and Research Centre of Standardization, Certification and Quality” (UkrNDNC) is the main organization for development of scientific,

²⁸ This text is partly based on information from <http://www.dssu.gov.ua/>

²⁹ Technical conditions and technical instruction.

methodical and organizational principles of certification for products, services, and quality management system. UkrNDNC also provides information on certification to enterprises and organizations.

WTO-accession and European integration³⁰

Membership in WTO has been set up as a precondition for Ukraine to enter into a free trade agreement with EU and possibly to achieve an associated membership status in EU. But to enter into WTO, Ukraine has to adopt consumer and market policy according to international and European standards. In the framework of Ukraine's accession to the WTO, SCS ensures implementation of provisions of the WTO Agreement on Technical Barriers to Trade, and in particular adaptation of the national legislative and normative base to the requirements of international standards, norms and rules.

For the purpose of WTO accession, SCS has elaborated an "Action Plan for achievement of the full-fledged conformity of the Ukrainian national standardization and technical regulation system with the requirements of the WTO Agreement on Technical Barriers to Trade for the years of 2005-2011", which has been submitted to WTO. Representatives of the SCS have participated in all the official and non-official meetings of the Working Group for consideration of Ukraine's application for accession to the WTO.

A part of the process have been do adopt new regulatory documents to harmonize the Ukrainian legislation to the *acquis*. In the course of 2003-2005 Ukraine adopted 22 similar documents, six of which in 2005. As of 1 February 2006 there were 3103 valid national standards, harmonised with international and European ones, among of which 900 were approved by the SCS during 2005. At the end of 2005, a program for the revision of valid state standards of the former USSR (GOST) were initiated. The number of [GOST-standards](#) are still more than 16 thousand. According to the results of the review there should be proposals prepared for withdrawal of GOST-standards as well as proposals for international and European standards to replace the GOST-standards. The revision of the large number of state standards of the former USSR and application of international standards are one of the most important for Ukraine's accession to WTO.

The next stage according to the Action Plan is the transformation of the system of obligatory certification into a system of conformity assessment, which corresponds to the requirements of international and European practices. In the course of 2005 SCS issued three Orders regarding the reduction of the list of products subjected to obligatory certification in Ukraine, resulting in cutting down of almost 60 kinds of products with low risk level for consumers.

At present, movement of Ukrainian products to the European market is promoted by the widely extended practice for concluding bilateral agreements on co-operation and mutual recognition of conformity assessment with countries-trade partners of Ukraine.

According to the Ukraine-EU Action Plan the SCS has initiated cooperation with the European Commission aimed at realisation of the project "Ukraine: Action Plan regarding free movement of industrial products". The implementation of the Action Plan will provide preparation for concluding an Agreement on conformity assessment and acceptability of

³⁰ This text is partly based on information from <http://www.dssu.gov.ua/>

industrial products (ACAA) between Ukraine and EU. Signing of such an agreement will provide Ukrainian producers with free access of domestic products into the European market.

According to the WTO TBT Agreement, a National information centre - [ISONET](#) - has been established at SCS. It is a centre for handling inquiries and notifications on technical regulations. ISONET (i) provides transparency during the development and adoption of technical regulations, standards and conformity assessment procedures, (ii) prepares answers for inquiries of WTO member – countries, and (iii) informs interested Central executive bodies and national manufacturers on technical regulations, standards and procedures for conformity assessment of WTO members.

Enforcement

At the central level of executive power the main responsible agencies for consumer protection are – State Consumer Standard of Ukraine, the Ministry of Health of Ukraine (sanitary-epidemiological and veterinary services), Ministry of Agricultural Industry and partially, only in the area of managerial functions, the Ministry of Economy of Ukraine. The indicated agencies are responsible for the function of market protection.

State Consumer Standard of Ukraine (SCS) has a special function besides market protection – it should protect consumer rights. The function of market protection and the function of consumer protection are similar. But they differ in terms of object and subject of the law. In market protection the object is represented by the legal relationship of the market participants – manufacturers, suppliers, buyers, etc. (both physical and legal entities).

In consumer rights protection – it is the rights of consumers (physical entities). The function of consumer protection is predominantly carried out by SCS except for market protection functions where the object of law is not the rights of consumers but rather norms that set requirements for safety and quality of products and services.

The main task of SCS is implementing state policy in the sphere of consumer protection, standardization, metrology and certification and performance of management in this sphere as well as intersectorial coordination and functional regulation on consumer protection, standardization, metrology and certification.

The legal substantiation of local self-governance bodies' is defined in Article 28 of the [Law "On Consumer Rights Protection"](#). The consumer protection authorities of local self-governance bodies are weaker than the authorities of the State Consumer Standard bodies. According to Article 30 part "b" paragraph 3 of the [Law of Ukraine "On Local Self-Governance in Ukraine"](#), control over the legislation on consumer rights protection is a delegated function for local authorities. After the adoption of amendments to the Law of Ukraine "On Consumer Rights Protection" in 2005, these delegated authorities can be easily related to the own authority of these bodies.

However, in practice the delegation of competencies has not been taking place. More over, decentralization of competencies has been very slow. Consumer rights protection administrations at the local authorities cover only 20% of the Ukrainian territory. At present in Ukraine, there are only 5 of them out of 25 oblast (20%) – in Kyiv City, Donetsk, Dnipropetrovsk, Kharkiv and Vinnitsa oblasts. The opening of such administrations in

Odessa, Rivne and Chernigiv is expected. A major challenge in establishing local consumer protection functions is the constant lack of recourses of local governance authorities to fulfil delegated competencies. At the present, consumer rights protection funding is still conducted at the discretion of public officials.

Unlike regional administrations of the SCS, the local authorities are institutionally more independent, especially from the burdensome functions of market protection and consumer rights protection.

Information to Consumers and Consumer Education

According to the Law a manufacturer is responsible to provide the following consumer information (Article 15):

<ul style="list-style-type: none"> • The product name • The brand for goods and services • Data from the normative documents that cover the products • Features or composition of a product • Note about substances harmful for health and presence/absence of genetic-modified organisms • Data on price (tariff) including taxes and other mandatory payments 	<ul style="list-style-type: none"> • Purchasing conditions and preservation rules for a product • Warranty obligations of the manufacturer • Exploitation or consumption rules • Information about the manufacturer or the importer of the product, as well as a contacts to who conducts repair or maintenance • Expiry dates • Utilization requirements
---	---

The indicated type of information is mandatory information.

Consumer information is indicated in accompanying documentation, on the label or in a different way accessible for a consumer to read. The Law does not set up the obligation of a manufacturer / seller to complement a product with the indicated information; rather it encourage him/her provide the information. This can cause fraud by a manufacturer or a seller related to the provision of incomplete information and therefore limiting a consumer’s capabilities to use the purchased product.

The role of mass media in the dissemination of consumer information is important in the period of establishing a market economy in Ukraine. However there are no stable periodic mass media means for a broad range of consumers. Separate publications of the SCS and separate private initiatives has nor found powerful support nor mass demand by consumers.

In Article 15 of the Law it is stated that information about a product is not considered as advertising. Many media use this situation and provide any information about a product. It

means that under the request of manufacturers a number of mass media means proactively use information field for “loading” consumers with those very data that encourage them to purchase products. As a result, consumer information drowns in commercials for products.

There are two TV-programs for consumers in Ukraine.

- “Consumer” on the 1st channel of the National Broadcasting
- “Consumer” on TBC “Kyiv” – Regional Broadcasting

Article 5 of the Law indicates that the state should create the conditions for acquiring necessary knowledge on consumer rights (the right to consumer education). But unfortunately the Law does not elaborate on the mechanisms of consumer education.

Role of Consumer Organisations

Due to the request of the Ukrainian Association of Consumers (UCA), the State Committee on Consumer Rights Protection Affairs was established in 1991, which nowadays is called the State Consumer Standard (SCS). There are approximately one hundred non-governmental consumer organizations in Ukraine. Their rights and status are defined by Article 25 of the Law of Ukraine “On Consumer Rights Protection”. Mostly these organizations deal with human rights protection, informational and educational activity and with the representation of consumer interests in public decision-making. Article 42 of the Constitution of Ukraine and Article 24 of the Law of Ukraine “On Consumer Rights Protection” declare that the state should promote and support consumer non-governmental organizations. However, the state does not in practice implement these declarations. The activities of these organizations are extremely important, as they, *inter alia*, initiate judicial procedures on consumer protection and conduct consumer education in Ukraine.

Unfortunately, initiatives of non-governmental consumer organizations do not receive meaningful support from the state. As an example, the SCS has not supported the initiative of the UCA on the establishment of the training course - “A Consumer ABC” - in primary and secondary schools. In spring 2005 the UCA submitted a request to the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and to the President of Ukraine with the proposal to determine a national strategy in food products consumption and with the claim to start at least the implementation of the Law of Ukraine “On Consumer Rights Protection” in 2002 edition in terms of marking genetic-modified products. The proposal remains ignored, there is still no marking of these products. In fall 2004, the UCA addressed to Verkhovna Rada of Ukraine with the proposal on adjustment of the current food product marking to the needs of consumers. It was also ignored.

The government seems to be generally non-receptive to consumer concerns in Ukraine. As a flagrant example could be mentioned a branch letter of the State Consumer Standard³¹ sent in 2005, which explains to the regional SCS-bodies that in case of obtaining claims from consumer NGOs, there are no reasons for reacting to these claims. It is obvious that one of the

³¹ # 4305-5-7/18 dated of 05/12/2006

most acute problems for consumer non-governmental organizations is to be heard by the executive authorities.

Non-governmental organizations of consumers have an unstable financial situation with lack of any support from the state. Thereby their implementation of consumer programs either is conducted slowly or becomes impossible. Consumer organizations are more likely to get understanding from larger commercial companies who often act as donors. Naturally such type of “cooperation” balances on the edge of conflict of interests between businesses and consumers.

Complaint Mechanisms and Redress

The biggest challenge in judicial protection of consumer rights is the overloaded courts, lack of simplified procedures for consumer suits and the lack of court independence from business and the executive power. Despite of this, courts do provide specific precedents in favour of consumers. The most useful are the interpretations of the resolutions of the Plenum of the Supreme Court of Ukraine. For example the interpretation that financial services to the population are also related to consumer rights that are protected by the law on consumer rights (the resolution of the Plenum on civil rights dated of April 12, 1996). The last resolution should be updated because of essential amendments to the Law of Ukraine “On Consumer Rights Protection”. Especially in the part related to distance trade, sales on credit and invalidation of terms in agreements that restrict consumer rights.

The applicable law in Ukraine outlines the following forms of consumer rights protection:

Consumer self-protection

The legal definition of self-protection is provided in Article 19 of the Civil Code and Articles 8 and 9 of the Law. Self-protection is conducted through a direct request to a seller or a manufacturer when the request is related to the safety or quality of a product, or the completeness and objectivity of the information. This form of protection is the form that the legislator has provided for to exchange poor-quality products; return paid funds for such goods in case exchange is impossible or warranty fixing of goods during the set timeframe.

Public interest consumer protection

Article 24 of the Law implies that there is a possibility to establish non-governmental organizations for consumer rights protection, the procedure of their establishment and activity is regulated by the Law “On Citizens’ Appeals” # 2460-12. Public interest protection is the realization of public (collective) interest towards consumer rights provision. However, in comparison with self-protection it is conducted with the involvement of state authorities, self-governance bodies and judicial authorities. Public interest protection is also characterized by the provision educational and analytic activities related to the observation of normative requirements of quality and safety of products and services (Article 25 of the Law).

State (administrative) protection

State protection is conducted by the competent bodies of the state authorities responsible for consumer rights protection and the system of its local branches (administrations and departments). The competence on consumer rights protection of the indicated bodies are defined by Article 26 of the Law and a number of by-laws. The revisions of economic entities are conducted exclusively under a written order of a head administrator and are distinguished either as planned (that are conducted not more often than once in a year) or unplanned that are conducted based on consumers' claims.

Self-governing protection

Close to the administrative (state protection) competencies is *self-governing protection* of consumer rights, which according to Article 28 is provided through the special divisions of executive committees of local self-governance bodies and implies: review and reaction to consumers' claims; studying agreements between consumers and manufacturers or sellers; temporary suspension of poor-quality products. However, in terms of other sanctions for violations of consumer legislation, the Law determines that local self-governance bodies should refer relevant information about violations to state power bodies responsible for consumer rights protection.

Judicial protection

Judicial protection of consumer rights is characterized by claims from consumers, non-governmental organizations or state bodies directly to economic courts. The new edition of the Law does not establish the jurisdiction of suits in consumer cases and contradicts the provisions of the previous edition of the Law, which allowed claims of an entity whose interests were violated to any court according to a claimant's choice. The jurisdiction is now depending on the location of a consumer or a defendant, according to a product purchasing location (territorial jurisdiction).