

## Chapter 2

# International and Regional Organisations and the Internationalisation of Consumer Law

### *The principal international organisations*

This chapter examines the role that different international organisations play in the development of international consumer law. The roles that these international organisations play, the manner in which they internationalise the law, and the reasons for their involvement in the area are diverse. Sometimes, however, their activities are the outcome of common action between two or more international players. An excellent example of such a joint effort is the currently pending revision of the UN Guidelines for Consumer Protection, which has involved a majority of the relevant international stakeholders in consumer protection.

### *The United Nations and consumer protection*

The United Nations (UN) is the most well-known and the most comprehensive international organization. It currently consists of 193 countries. The last Member State to join the UN was South Sudan in 2011. The UN was established immediately after World War II, in 1945. Besides its main function to secure peace and stability throughout the world, the United Nations has been active in the area of consumer protection. The most important result of this is the soft law instrument of the United Nations Guidelines for Consumer Protection, drafted by the former Economic and Social Council (ECOSOC), and adopted in 1985 by a consensus resolution of the General Assembly. The United Nations has strongly promoted the effective implementation of the guidelines in the Member States, and by businesses and civil society.

As a result of the increasing importance of developments in technology, communication and trade, the UN Guidelines have been expanded twice. First, they were updated in 1999 to include provisions on sustainable consumption.<sup>1</sup> Second, the UN Guidelines were revised in 2016 in order to provide for innovative

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<sup>1</sup>United Nations Conference for Trade and Development, 'United Nations Guidelines for Consumer Protection (as expanded in 1999)' A/RES/39/248, available at: <http://unctad.org/en/docs/poditccplm21.en.pdf>.

provisions dealing with good business practices in business-to-consumer relations, dispute resolution and consumer redress.

In the development and expansion of the UN Guidelines, the United Nations Conference for Trade and Development (UNCTAD) has played a particular role. UNCTAD is an organisation established by the UN. Its main goals are to work as a laboratory of ideas and to provide on-the-ground assistance to help developing countries raise living standards through trade, investment, finance and technology, to help developing countries benefit from the globalised economy, and to contribute to the international debate on emerging issues relating to developing countries and the world economy. After the latest modification of the UN Guidelines in 2016, an intergovernmental group of experts on consumer protection law and policy was founded to monitor the implementation of the UN Guidelines. The group is also intended to be a place for the exchange of best practices, and to provide technical cooperation and capacity building in the area of consumer protection. This 'institutionalisation' is particularly important for developing countries and economies in transition.

The UN Guidelines are akin to a set of best practices to be applied in business-to-consumer relations as minimum standards of consumer protection. They provide particular assistance to developing countries that either have not had a regime for consumer protection, or have only had an underdeveloped regime.<sup>2</sup> The UN Guidelines emphasise seven fundamental principles of consumer law: the protection of health and safety of consumers; the protection of economic interests of consumers; the provision of consumers with adequate information; consumer education; accessibility of consumers to an effective means of redress; the establishment of consumer associations and consumer participation in decision making process, and sustainable consumption.<sup>3</sup>

There is a noticeable similarity between these seven basic principles and the fundamental rights of each consumer outlined by the USA President John F. Kennedy in 1962 which prompted the subsequent development of consumer law and policy.<sup>4</sup> The only major difference from the American set of consumer rights is that the UN Guidelines also identify sustainable consumption as one of the major principles after its proposal by Argentina at the Rio Earth Summit, and subsequent adoption in 1999.<sup>5</sup> The introduction of sustainable consumption displays the recognition by consumer policy of the patterns developed outside of consumer law relating to sustainable development and protection of the environment. These developments now play a key role in the evolution of common consumer policy, displaying a tight connection between consumer and environmental protection.

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<sup>2</sup>See: D. Harland, *The United Nations guidelines for consumer protection*, JCP 10 (1987) 245–266.

<sup>3</sup>*Ibid.*, at [3].

<sup>4</sup>J Kennedy, 'Special Message to the Congress on Protecting the Consumer Interest', 15 March 1962, available online at <http://www.jfklibrary.org/Asset-Viewer/Archives/JFKPOF-037-028.aspx/OJ1975C92/1>.

<sup>5</sup>Decision 54/449 of the General Assembly of the United Nations.

In addition to defining fundamental rights that should be attributed to all consumers in the world, the Guidelines provide rules regarding how these principles should be applied and enforced in practice. The Guidelines pay particular attention to strengthening cross-border cooperation amongst countries in order to guarantee a high level of consumer protection. It is for this reason that the Guidelines identify the principles on which international cooperation between states should be founded. The latest amendments of the UN Guidelines in 2016 have again emphasised this need.

Despite the fact that the Guidelines are not legally binding, their effects have been far reaching, and they have consequently been the most influential international instrument for consumer protection. This is because of the comprehensive character and fundamental importance of the United Nations, which has allowed for gap-filling in countries which did not have any, or had an insufficiently developed, system of consumer protection. Therefore, the Guidelines have been used as an inspiration and model for many of the world's countries to develop their own national systems of consumer protection.<sup>6</sup> The national laws on consumer protection worldwide represent the emanation and development of the fundamental consumer rights listed in the Guidelines. Many countries have even incorporated the achievement of a high level of consumer protection into their national constitutions.<sup>7</sup>

The UN Guidelines pay particular attention to the development of international cooperation amongst countries.<sup>8</sup> The UNCTAD Implementation Report adopted in 2013, as part of the process of expansion of the UN Guidelines, points to the need to establish and enforce international standards, including neutral networks. Therefore international cooperation is one of the priorities of the ongoing reform of the Guidelines. Accordingly, the idea is to propose the foundation of a new and separate UN Commission as the main international institution in charge of consumer protection. The idea of the establishment of a UN body akin to the World Consumer Organisation arose in the mid-1980s, but it has not been implemented. Political support for the development of such an initiative is still absent. A less ambitious option has now been promoted by the newly established intergovernmental group of experts on consumer protection law and policy under the auspices of the UNCTAD. The first meeting of the intergovernmental group took place in autumn 2016 in Geneva.

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<sup>6</sup>United Nations Conference for Trade and Development, 'Implementation Report on the United Nations Guidelines on Consumer Protection (1985–2013)', E/1999/INF/2/Add.2, available at: [http://unctad.org/meetings/en/SessionalDocuments/ciclpd23\\_en.pdf](http://unctad.org/meetings/en/SessionalDocuments/ciclpd23_en.pdf).

<sup>7</sup>I Benöhr and HW Micklitz, 'Consumer protection and human rights', G Howells, I Ramsay and T Wilhelmsson, *Handbook of Research on International Consumer Law* (Edward Elgar 2010), 36–38.

<sup>8</sup>United Nations Conference for Trade and Development, 'United Nations Guidelines for Consumer Protection (as expanded in 1999)' A/RES/39/248, available at: <http://unctad.org/en/docs/poditccclpm21.en.pdf> at [63] et seq.

The updated version of the UN Guidelines of 2016 represents the outcome of intensive work by the UNCTAD on the material revision of the previous version of the Guidelines. The work was performed in cooperation with national governments and international organisations. The main aim was to address developments since 1999 in the market, society, business practices and means of communication.<sup>9</sup> This is in accordance with the spirit of the document, which was not intended to be static, but instead to be constantly updated. The work on the revision of the Guidelines was divided into four working groups, each one dealing with a different topic: E-commerce, financial services, other issues, and implementation of the UN Guidelines. The specific, innovative areas of consumer protection now covered as a result of the 2016 amendments are e-commerce, financial services, data protection, misleading energy advertising, cross-border trade, transport, access to universal services, access to knowledge, tourism, and consumer redress. Most of these were not addressed in the previous versions of the Guidelines of 1985 and 1999.

*The World Bank as the new engine of the internationalisation of consumer law*

The World Bank was established at the end of World War II in order to support the reconstruction and development of numerous countries which had been badly affected during wartime. Over time, the World Bank's main functions have changed and evolved. Nowadays it has turned into a leading global institution in charge of "poverty reduction through an inclusive and sustainable globalisation".<sup>10</sup>

With regard to the development of consumer protection regulation, the World Bank is primarily concerned with the protection of consumers in the area of financial services, and the wide range of related contracts and practices. From its foundation until recently the World Bank did not show much interest in the field of consumer protection. This changed after the latest global financial crisis because a lack of adequate consumer protection was identified as a cause. Accordingly, the interest of the World Bank in consumer finance is booming, and its activities in the area are notable.

Proper financial consumer protection is now being recognised as an important factor in financial stability. Accordingly, the regulatory activity of the World Bank has increased as a consequence of the credit crunch, which indicated that it was necessary to change the regulatory approach towards consumer protection in financial services.<sup>11</sup> The latest global financial crisis demonstrated that an adequate and efficient regulatory framework of consumer protection is one of the necessary prerequisites for

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<sup>9</sup>United Nations Conference for Trade and Development, 'Implementation Report on the United Nations Guidelines on Consumer Protection (1985–2013)', E/1999/INF/2/Add.2, available at: [http://unctad.org/meetings/en/SessionalDocuments/ciclpd23\\_en.pdf](http://unctad.org/meetings/en/SessionalDocuments/ciclpd23_en.pdf).

<sup>10</sup><http://www.worldbank.org/en/about/history>.

<sup>11</sup>I Ramsay and T Williams, 'The crash that launched a thousand fixes: Regulation of consumer credit after the lending revolution and the credit crunch' in K Alexander and N Moloney, *Law Reforms and Financial Markets* (Edward Elgar 2011), 221 *et seq.*

global financial stability. Additionally, the regulation of consumer protection is an important instrument in the wider goal of reducing poverty worldwide.<sup>12</sup>

The first activities of the World Bank in this area actually occurred shortly before the beginning of the crisis. In 2005, the World Bank started the development of good business practices towards consumers in the area of financial services. The initially narrow scope and power of the pre-crisis programme were eventually broadened substantially.<sup>13</sup> In 2010, the World Bank started its much more ambitious Global Programme on Consumer Protection and Financial Literacy.<sup>14</sup> The programme aims to help countries worldwide to improve their mechanisms for consumer protection in the widest possible range of financial services, providing concrete and measurable improvements. Studies have shown an emerging need for the existence of such a programme.<sup>15</sup>

It is notable that the programme pays particular attention to the additional protection of vulnerable consumers who are particularly sensitive to traders' breaches of consumer rules. This is because vulnerable consumers have been the most affected in the global financial crisis. In 2012, the World Bank published the Good Practices for Financial Consumer Protection.<sup>16</sup> The World Bank does not, however, act alone in its consumer protection policy-making. Its activities are performed in close cooperation with the Group of Twenty (G20) and the OECD.

#### *The OECD and the development of consumer protection*

The Organisation for Economic Co-Operation and Development (OECD) was established in 1961. Its main purpose is to contribute to the economic and social well-being of all people around the world through the development of a diverse set of policies. It currently consists of 29 Member State which are the most developed economies in the world. The OECD does not have any governmental powers. Instead, it represents a forum where Member States discuss policies that can be defined and adopted only by unanimous consensus. The OECD may adopt non-binding documents, in the form of Guidelines or Recommendations, which may have far-reaching effects despite their lack of formal bindingness, not least due to the unanimous and consensual character of their adoption.

In the context of the development of consumer law and policy, the OECD represents a forum where many relevant stakeholders meet and make decisions.

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<sup>12</sup>I Ramsay, 'Regulation of consumer credit' in G Howells, I Ramsay and T Wilhelmsson, *Handbook of Research on International Consumer Law* (Edward Elgar 2010), 380.

<sup>13</sup>See the World Bank Programmes of 2006 and 2008.

<sup>14</sup><http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTFINANCIALSECTOR/0,,contentMDK:22761006~pagePK:148956~piPK:216618~theSitePK:282885,00.html>.

<sup>15</sup>S L Rutledge, *Consumer Protection and Financial Literacy: Lessons from Nine Countries Studies*, The World Bank Policy Research Working Paper 5326 (2010), available at: [http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Consumer\\_Protection\\_and\\_Fin\\_LiteracyWPS5326.pdf](http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Consumer_Protection_and_Fin_LiteracyWPS5326.pdf).

<sup>16</sup>World Bank, "Good Practices for Financial Consumer Protection" [2012] available at: [http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Good\\_Practices\\_for\\_Financial\\_CP.pdf](http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Good_Practices_for_Financial_CP.pdf).

A separate committee in charge of consumer protection was established in 1969, the OECD Committee for Consumer Protection (CCP).<sup>17</sup> This Committee advocated strongly in favour of the adoption of certain global principles of consumer protection, i.e. the UN Guidelines on Consumer Protection in 1985.

The Civil Society Information Society Advisory Council (CSISAC) is an international union of privacy, digital rights, and consumer organisations, and scholars in the area, whose main task is to contribute to the policy making of the OECD Committee for Information, Computer and Communication Policy. The Committee also engages in consumer related tasks. One of the main goals of the OECD's consumer policy is to fight fraudulent and misleading advertising. This aim is enshrined in the OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders published in 2003.<sup>18</sup> These Guidelines advocate stronger cooperation between the Consumer Protection Authorities of the Member States in combating unfair practices by traders.

The OECD noted that the development of internet trade was a particularly sensitive topic for consumers, and therefore an innovative and adequate regulatory response was required. As a result, the OECD published its Guidelines for Consumer Protection in the Context of E-Commerce, which were adopted in 1999.<sup>19</sup> These Guidelines aim to promote e-commerce through clarification of the rights and obligations of online buyers and sellers in accordance with their main rationale to increase the confidence of all participants in online trade.<sup>20</sup> The OECD Guidelines focus on the imposition of transparency requirements and a universal duty of information as the main instruments for consumer protection in online transactions, in addition to the development of general principles of business-to-consumer fair-trading. The OECD strongly encourages the internationalisation of the rules on consumer protection in e-commerce because diverse online platforms are becoming increasingly popular forums for performing commercial transactions. Accordingly, online shopping with a cross-border element has a significant presence.<sup>21</sup>

The Guidelines strongly promote alternative dispute resolution (ADR) mechanisms as means to resolve consumer disputes instead of regular state based judicial or administrative mechanisms. ADR mechanisms are regarded as beneficial for individual consumers, in particular with regard to cross-border trade in which ADR is typically more accessible, cheaper, faster, more confidential, and more efficient. The recent European Directive 2013/11/EU on alternative dispute resolution reflects this reasoning. Currently, the OECD Guidelines are under revision in order to align them with recent developments. The results are due to be finalised in 2017.

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<sup>17</sup><http://www.oecd.org/sti/consumer/>.

<sup>18</sup>Available at: <http://www.oecd.org/internet/consumer/2956464.pdf>.

<sup>19</sup>OECD, 'Guidelines for Consumer Protection in the Context of E-Commerce', available at <http://www.oecd.org/internet/consumer/34023235.pdf>.

<sup>20</sup><http://www.oecd.org/sti/consumer/2091663.pdf>.

<sup>21</sup>See OECD Guidelines for Consumer Protection in the Context of E-Commerce.

As discussed above, the global economic crisis showed that the area of financial services is particularly sensitive. The regulatory response of the OECD, together with the G20 group, resulted in the drafting of the High-level Principles on Financial Consumer Protection in 2011.<sup>22</sup> The OECD developed these Principles on the initiative of the G20 Finance Ministers and Central Bank Governors. The principles are based on three main pillars: full transparency, responsible lending policy, and efficient redress in case of consumer complaints.<sup>23</sup> These are broken down into ten fundamental principles. The main goal is to secure consumer trust in financial services and responsible lending. As an example of their effects in practice, Saudi Arabia has used the High-level Principles on Financial Consumer Protection to develop its own national legislation.<sup>24</sup>

The performance of commercial transactions has also attracted the attention of the OECD, resulting in two different types of Guidance. The first is the OECD Policy Guidance for Addressing Emerging Consumer Protection and Empowerment Issues in Mobile Commerce. The Guidance deals with the issues arising from so-called m-commerce, a particular form of e-commerce which utilises mobile devices used for telecommunication services.<sup>25</sup> Accordingly, particular care is to be paid to the protection of children acting as consumers due to their vulnerability. The second type of Guidance is the OECD Policy Guidance on Mobile and Online Payment providing for information disclosure in order to protect consumers.

In 2013, the OECD published a report in which it assessed the emerging trend of e-commerce, and the dangers it poses to consumers. Consumers' confidence in e-commerce is regarded as lacking because of the complex information requirements, the existing legislative gaps, the diverse forms of unfair commercial practices, privacy issues, and the lack of developed and effective mechanisms of redress.<sup>26</sup> In particular, consumer redress is seen as a fundamental prerequisite for strengthening consumer trust in e-commerce.<sup>27</sup>

Protecting the privacy of consumer data is yet another area of concern for the OECD. The product of this is the OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data of 1980 (as updated in 2012).<sup>28</sup> Equally, consumer redress is a persistently important issue; therefore the OECD issued the Recommendation on Dispute Resolution and Redress in 2007.<sup>29</sup> Consumers should have access to a fair, easy to use, timely, effective and cheap

<sup>22</sup>OECD, 'G20 High-level Principles on Financial Consumer Protection' available at <http://www.oecd.org/daf/fin/financial-markets/48892010.pdf>.

<sup>23</sup><http://www.oecd.org/daf/fin/financial-markets/48892010.pdf>.

<sup>24</sup><http://www.sama.gov.sa/sites/SAMAEN/ConsumerProtection/Pages/ConsumerRights.aspx>.

<sup>25</sup><http://www.oecd.org/internet/consumer/40879177.pdf>.

<sup>26</sup>OECD Report on Empowering and Protecting Consumers in the Internet Economy 2013.

<sup>27</sup>A Manzoor, *E-Commerce*, 388.

<sup>28</sup>OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (July 2013), available at <http://www.oecd.org/sti/ieconomy/2013-oecd-privacy-guidelines.pdf>.

<sup>29</sup>Available at: <http://www.oecd.org/sti/consumer/38960101.pdf>.

system for the resolution of disputes, including if possible alternative mechanisms. The Recommendation covers both domestic and cross-border disputes. Accordingly, national consumer agencies should have the right to obtain and to facilitate redress in the name of consumers.<sup>30</sup>

### *Consumer International*

Consumer International (CI) is a global federation of consumer groups. It consists of more than 250 organisations from 120 countries, with five main offices on different continents.<sup>31</sup> It was established in 1960, at the dawn of the development of consumer law and policy. Today, CI is actively involved in many international, regional and national projects and programmes relating to the improvement of regulatory regimes of consumer protection. CI played a particularly prominent role in the elaboration of the UN Guidelines and the recent update.<sup>32</sup>

Consumer International currently runs four programmes with the aim of improving consumer protection in the following sensitive areas: financial services, food safety, e-commerce, and consumer justice. CI has also provided a guide for the development of consumer legislation in the Common Market of Eastern and Southern Africa (Comesa).<sup>33</sup> Through these actions, it plays an essentially important role in the global promotion of consumer rights. One of the main outcomes of these efforts is that every year the 15th March is celebrated as the International Day for Consumer Protection throughout the world.

### *World Trade Organisation*

The World Trade Organisation (WTO) sets the rules on international trade between countries worldwide. It has 162 Member States. Surprisingly, neither the General Agreement on Trade Tariffs (GATT) nor any other WTO agreement contain any provision that mentions consumers as a category of market participant, nor the concept of consumer protection in general.

In the WTO system, only the Agreement on Technical Barriers to Trade (TBT Agreement) has provisions that relate to the protection of economic interests of consumers by allowing Member States to introduce or maintain regulatory regimes for consumer protection.<sup>34</sup> The WTO regulatory approach is producer oriented. Its

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<sup>30</sup><http://www.oecd.org/sti/consumer/36456184.pdf>.

<sup>31</sup><http://www.consumersinternational.org>.

<sup>32</sup>Consumer International, *Updating the United Nations Guidelines for Consumer Protection for the Digital Age*, 2013.

<sup>33</sup>Consumer International, 'A guide to developing consumer protection law', 2011, available at <http://www.consumersinternational.org/>.

<sup>34</sup>E R Lowe, *Technical Regulations to Prevent Deceptive Practices: Can WTO Members Protect Consumers From [un] Fair-Trade Coffee and [Less-Than] Free-Range Chicken?* *Journal of World Trade* 48 no 3 (2014) 593–628.



main goal is to ensure that cross-border trade of goods and services takes place with as few administrative and regulatory obstacles as possible. Consumer economic interests, such as the imposition of information requirements or the protection against unfair commercial practices, are contrary to this producer friendly approach.<sup>35</sup>

The WTO appears to be more concerned with consumer safety, and specifically food safety. The Agreement on the Application of Sanitary and Phytosanitary measures (SPS Agreement) has brought a set of basic rules, the aim of which is to ensure that consumers are supplied with food that is safe to eat.<sup>36</sup> The SPS Agreement entered into force on 1 January 1995 together with the establishment of the WTO. The international standards of safety that enhance consumer protection and fair trading in food commerce globally are to a large extent elaborated by the Codex Alimentarius Commission.<sup>37</sup>

### *International Monetary Fund*

The International Monetary Fund (IMF) founded in 1945 consists of almost all the Member States of the United Nations, totaling 188 countries. Its main goal is the development of international economic cooperation. The activities of the IMF in the area of consumer protection are of a very limited character. One of the few examples of these scarce efforts is the project launched in 2009 on collecting information about consumers' access to financial services worldwide.<sup>38</sup>

### *International Financial Consumer Protection Organisation*

The International Financial Consumer Protection Organisation (FinCoNet) established in 2013 brings together financial consumer protection supervisory authorities. The principal goal of the FinCoNet is to promote sound market conduct and strong consumer protection through efficient and effective financial market conduct supervision. It deals with all forms of consumer credit arrangements, applicable to both credit providers and credit intermediaries.

The FinCoNet works closely with the OECD when it comes to protecting consumers in the field of financial services. The outcome of these joint efforts is the 2014 publication *Responsible Lending—a Review of Supervisory Tools for Consumer Lending Practices*. These are a set of business principles applicable for credit providers and credit intermediaries in the case of consumer credit. These guidelines pay particular attention to securing responsible lending, which has become very relevant after the global financial crisis.

<sup>35</sup>S E Rolland, Are Consumer-Oriented Rules the New Frontier of Trade Liberalization? (2013). School of Law Faculty Publications. Paper 262. <http://hdl.handle.net/2047/d20004926>.

<sup>36</sup>See: M. A. Echols, *Food Safety and the WTO*, Kluwer Law International 2001.

<sup>37</sup>Codex Alimentarius Commission, Implementation of the Uruguay Round of Multilateral Trade Negotiations, ALINORM 95/7, Part 1 (Rev'd) and Part 2 (1995), 1.

<sup>38</sup><http://www.imf.org/external/np/sec/pr/2009/pr09351.htm>.

### *The International Organisation for Standardisation*

The International Organisation for Standardisation (ISO) is the biggest global producer of voluntary international standards. It was established in 1947, and consists of national standards bodies from 165 countries.<sup>39</sup> National standards bodies were established in the age of industrialisation. Usually they are founded and run by the business sectors themselves. ISO publishes international standards in all areas of business and technologies. ISO standards are linked to the WTO TBT Agreement. The overall idea is to encourage producers around the world to comply with non-binding ISO standards as a gateway for marketing products worldwide under the same conditions. Over the last years, ISO has continued to develop more standards that are directly or indirectly relevant for consumers.

The Committee on Consumer Policy of the International Organisation for Standardizations (COPOLCO) includes members from the OECD, Consumer International, and 89 countries. It has published eight standards relevant for consumer protection:

1. ISO/IEC Guide 14:2003 Purchase information on goods and services intended for consumers
2. ISO/IEC Guide 37:2012 Instructions for use of products by consumers
3. ISO/IEC Guide 41:2003 Packaging—Recommendations for addressing consumer needs
4. ISO/IEC Guide 46:1985 Comparative testing of consumer products and related services—General principles
5. ISO/IEC Guide 50:2014 Safety aspects—Guidelines for child safety in standards and other specifications
6. ISO/IEC Guide 76:2008 Development of service standards—Recommendations for addressing consumer issues
7. ISO/IEC Guide 51:2014 Safety aspects—Guidelines for their inclusion in standards
8. ISO/IEC Guide 74:2004 Graphical symbols—Technical guidelines for the consideration of consumers' needs.

In addition to the ISO, the International Electrotechnical Commission (IEC) warrants mentioning. The IEC develops standards in the area of electrical, electronic and related technologies, some of which are relevant for consumer protection, especially with regard to consumer safety.<sup>40</sup> Similar activities exist on the regional level, as is the case with the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (CENELEC), which produce standards applicable across the whole European single market.<sup>41</sup> The European approach to barriers to trade and the WTO approach are strongly interrelated, in fact it seems as if the European engagement with non-tariff

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<sup>39</sup>[http://www.iso.org/iso/home/about/about\\_governance.htm](http://www.iso.org/iso/home/about/about_governance.htm).

<sup>40</sup><http://www.iec.ch/index.htm>.

<sup>41</sup><http://www.cencenelec.eu>.

barriers to trade since the 1970s has paved the way for the WTO TBT agreement. Whilst both apply the same regulatory philosophy—non-binding technical standards lay down the yardstick for the merchantability of goods—they target different audiences: the WTO focuses on world trade, whereas the EU concentrates on the European internal market.

### *The International Chamber of Commerce*

The International Chamber of Commerce (ICC) in Paris publishes and regularly updates the Code of Advertising and Marketing Communication Practice, which provides globally applicable horizontal rules for the advertising practices of businesses.<sup>42</sup> ICC is currently drafting new guidance that will deal with the specific emerging area of mobile marketing.

Besides the universal rules provided for by ICC, which are applicable to all traders, other bodies provide more sector-specific rules. The Guiding principles for advertising and marketing communication to children made by the International Council of Toy Industries (ICTI) addresses traders from that industry sector only.<sup>43</sup> The principles apply exclusively to advertising in the toy industry where children, as an especially vulnerable category of consumers, are in need of a high level of protection. For instance, one of the rules dealing with aggressive practices of this Guide states: “Premiums should be used and presented responsibly. There should be no sales pressure.”<sup>44</sup>

## **Regional organisations and consumer law**

### *The European Union*

The European Union (EU) is a regional organisation that currently consists of 28 Member States following the accession of Croatia in July 2013. However, the effects of EU law, in particular the rules on consumer protection, reach significantly beyond the borders of the European Union.<sup>45</sup>

The EU has materially grown and evolved as a political and economic union, in both size and competence, since its establishment shortly after WWII. The EU has focused particularly on the establishment and development of a single market based on four fundamental freedoms: freedom of movement of goods, freedom of movement of capital, freedom of movement of workers, and freedom of movement of services. In order to strengthen the single market, the EU has invested much

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<sup>42</sup>ICC Code of Advertising and Marketing Communication Practice, [http://www.codescentre.com/images/downloads/660%20consolidated%20icc%20code\\_2011\\_final%20with%20covers.pdf](http://www.codescentre.com/images/downloads/660%20consolidated%20icc%20code_2011_final%20with%20covers.pdf); it was revised for the last time in 2011, accessed on 12 May 2014.

<sup>43</sup>Guiding principles for advertising and marketing communication to children, <http://www.toy-icti.org/info/communications-to-children.html>, accessed on 12 May 2014; <http://www.tietoy.org/toy-sector-in-europe/commercial-communications/>, accessed on 12 May 2014.

<sup>44</sup>*Ibid.*

<sup>45</sup>See J Stuyck and M Durovic, ‘The External Dimension of EU Consumer law’ in M Cremona and HW Micklitz (eds), *The External Dimension of EU Private Law*, (Oxford 2016).

effort in harmonising the national laws of its Member States, including consumer laws, as a necessary prerequisite for fostering free movement of goods.

From a global perspective, the European Union is the regional organisation with the most advanced regulatory regime for consumer protection, consisting of a high degree of consumer law harmonisation between Member States.<sup>46</sup> The establishment of a common European consumer policy has played an important role in strengthening the single market. The beginnings of EU consumer policy can be traced back to the 1970s. The first document adopted was the First Preliminary of the European Economic Community for a Consumer Protection and Information Policy.<sup>47</sup> The First Preliminary programme listed five fundamental rights of each consumer: the right to health and safety protection; the right to the protection of economic interests; the right to reparation and damages; the right to information and education, and the right to representation. The entire European system of consumer protection has subsequently been based and developed on the foundations of these five fundamental rights.

The first Treaties of the European Union, its main constitutional basis, did not include any provisions that dealt exclusively with consumer protection. It was only in 1992 that consumer protection was eventually incorporated with the approval of the Treaty on European Union (the 'Maastricht Treaty').<sup>48</sup> Today, the Treaty on the Functioning of the European Union (TFEU), emphasises the significance of consumer policy for the EU by pointing out that '[c]onsumer protection requirements shall be taken into account in defining and implementing other Union policies and activities'.<sup>49</sup> Furthermore, the TFEU underlines the obligation of the EU 'to promote the interests of consumers and to ensure a high level of consumer protection'.<sup>50</sup>

The right to be protected as a consumer has been aligned with fundamental human rights through its incorporation in the Charter of Fundamental Rights of the European Union.<sup>51</sup> The right of access to justice is another provision of the Charter relevant to consumer protection: it guarantees, *inter alia*, the right to effective redress in cases where consumers' rights have been infringed.<sup>52</sup>

In the ongoing process of Europeanisation of private law through secondary legislation, consumer law is unquestionably the most affected area.<sup>53</sup> This is

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<sup>46</sup>H. Micklitz, N. Reich, P. Rott, Understanding of EU Consumer Law; S Weatherill, *EU Consumer Law and Policy*, 2nd ed 2013.

<sup>47</sup>The First Preliminary Programme for a Consumer Protection and Information Policy of 1975.

<sup>48</sup>Article 129a of the Treaty on European Union.

<sup>49</sup>Article 12 TFEU.

<sup>50</sup>Article 169 TFEU.

<sup>51</sup>Article 38 of the Charter of Fundamental Rights of the European Union.

<sup>52</sup>Article 47 of the Charter of Fundamental Rights of the European Union.

<sup>53</sup>See S Weatherill, *EU Consumer law and Policy* (2nd edn Edward Elgar Publishing 2013), 188 et seq.

primarily due to the relevance of regulatory regimes of consumer protection for the elimination of obstacles to the free movement of goods, and therefore for the single market upon which the EU has been formed.<sup>54</sup> Initially, the Member States materially differed in their approaches towards regulation of consumer protection. Some countries were characterised by their long and rich legal tradition of consumer protection, whereas in other Member States the provision of specific protection for consumers was alien to their national legal systems. Therefore, harmonisation was seen as a necessary instrument for the development of cross-border trade.

Today, the European ‘regulatory body’ for consumer protection consists of more than a dozen directives, regulations and recommendations.<sup>55</sup> However, these rules are fragmented and sector-specific, focusing on specific types of consumer contracts, such as consumer credit, package travel, timeshares, distance selling, or doorstep selling. The significant exception to the present fragmentation is found in the provisions of two directives: Directive 2005/29/EC on unfair commercial practices, and Directive 93/13/EEC on unfair contract terms. These both have a broader scope of application, thus applying to a wider range of business-to-consumer commercial practices and consumer contracts.

All of these rules, the main purpose of which is to protect the economic interests of consumers, are particularly focused on securing free and informed choice of action in the market. For these purposes, diverse regulatory instruments are contained in the legislation, such as the duty of information, a total prohibition on misleading and aggressive practices, and the prohibition of the stipulation of unfair contract terms, or the introduction of the consumer’s right of withdrawal, in certain types of consumer contract. The rules contained in the European legislation have been interpreted, clarified, and further developed through an impressive number of decisions by the Court of Justice of the European Union (the ECJ) in Luxembourg.<sup>56</sup> In fact, the ECJ has been an engine for the development of consumer law, thus contributing to a higher level of harmonisation between national regulatory regimes.

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<sup>54</sup>see Case C-120/78 *Rewe Zentral v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon)* [1979] ECR 00649.

<sup>55</sup>Directive 2011/83/EU on consumer rights; Directive 2008/48/EC of 23 April 2008 for the on consumer credit; Directive 90/314/EC on package travel, package holidays and package tours (now under revision); Directive 93/13/EEC on unfair contract terms; Directive 2008/122/EC on timeshare contracts; Directive 1999/44/EC on the sale of consumer goods; Directive 2002/EC on distance marketing of consumer financial services; Directive 2005/29/EC on unfair business-to-consumer commercial practices; Directive 2009/22/EC on injunctions; Directive 2013/11/EU on alternative resolution of consumer disputes; Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; Regulation 2006/2004 on consumer protection cooperation; Regulation 2013/524 on online resolution of consumer disputes.

<sup>56</sup>See: HW Micklitz and B Kas, Overview of cases before the CJEU on European Consumer Contract Law (2009–2013): Part I, European review of contract law, 2014, Vol. 10, No. 1, pp. 1–63.

Through its judicial practice, the ECJ has established important concepts of EU consumer law. An example of this is the ‘invention’ of the ‘average consumer’ as the main benchmark of protection in EU consumer policy, thus explaining how an ideally imagined European consumer is expected to behave in the reality of the market. Another important fruit of this judicial activism is the imposition of a universal obligation upon national courts to assess, *ex officio*, whether a term in a consumer contract is unfair and, if that is the case, to provide for the necessary consequences according to the provisions of the national law.<sup>57</sup> It would appear that the ECJ is ready to extend the *ex officio* doctrine to all mandatory European consumer law rules.

Another leading aspect of European consumer law is a developed consumer movement, in which national consumer organisations play an important role in education, empowerment and, of course, protection of consumers when their rights are infringed. The European Consumer Organisation (the BEUC), which is a supranational unifying point for all national consumer organisations, plays a crucially important role in the protection of consumer interests and the development of a common European consumer policy.<sup>58</sup> Both the national consumer organisations and BEUC come together in Consumer International, the international umbrella organisation.<sup>59</sup>

The impact of EU consumer law is not limited to the borders of the European Union’s 28 Member States. The spill-over effects are noticeable in the regulatory regimes of consumer protection in many other countries. EU consumer law has had a strong impact on the legal systems of numerous countries outside the European Union that have accepted, partially or entirely, European regulatory regime of consumer protection and its concepts for differing reasons. Three major reasons appear crucial, and may provide the best explanation for this phenomenon.

First, EU consumer law is the most developed regional regulatory regime of consumer protection in the world; therefore it provides an excellent model for countries or regions that want to improve their own regulatory regimes. Secondly, acceptance of the European regulatory regime of consumer protection is a necessary prerequisite for further progress in the EU integration process for countries that wish to become Member States. Thirdly, EU consumer law is imposed on other countries by the European Union through international trade agreements that the EU signs with the purpose of avoiding non-tariff obstacles to trade. Regulation of consumer protection typically represents one of these obstacles. Through these agreements, the EU exports its values and concepts, wherein the achievement of a high level of consumer protection is an important element.<sup>60</sup>

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<sup>57</sup>Case C-243/08 *Pannon GSM Zrt. v Erzsébet Sustikné Győrfi* [2009] ECR I-04713.

<sup>58</sup><http://www.beuc.eu/>.

<sup>59</sup><http://www.consumersinternational.org/>.

<sup>60</sup>J Stuyck and M Durovic, ‘The External Dimension of EU Consumer law’ in M Cremona and HW Micklitz (eds), *The External Dimension of EU Private Law*, (Oxford 2016).

### *The Council of Europe*

The Council of Europe is a regional organisation consisting of the 47 countries that are geographically within the European continent, with the exception of Belarus. It is therefore a larger organisation than the European Union, but with a significantly smaller number of competences, and less power. It was established in 1949 in Strasbourg, France with the particular goals of promoting cooperation amongst European countries, and developing and spreading the rule of law, democratic values, and human rights. In 1950, the Council adopted the European Convention of Human Rights. All the Member States and now all of their citizens can directly appeal to the European Court of Human Rights, which is located in Strasbourg.

As with the European Union, the Council of Europe has a long tradition in the area of consumer protection. In 1973, the Consultative Assembly adopted the Consumer Protection Chapter. The chapter emphasised fundamental consumer rights including: the right to protection (from unsafe products and economic interests) and assistance, the right to redress; the right to consumer information; the right to consumer education; and the right to representation and consultation.<sup>61</sup> Despite lacking binding character, the chapter is of great symbolic importance because it was the first official document adopted on a European level that emphasised the need for the adoption of consumer protection laws. The chapter provided the basis for the development of the consumer movement in Europe, and it urged for consistency amongst diverse national consumer laws.<sup>62</sup>

After the adoption of the chapter, the Council of Europe passed two conventions in two particularly sensitive and increasingly relevant areas of consumer protection: product liability and data protection. These were covered respectively by the provisions of the European Convention on Products Liability in regard to Personal Injury and Death of 1977,<sup>63</sup> and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 1981.<sup>64</sup> Both influenced the development in the European Union of the adoption of the product liability directive in 1985<sup>65</sup> and the directive on data protection in 1995.<sup>66</sup>

The Council of Europe's activity in the area of consumer protection continued with the adoption of the Recommendation on the Protection of Consumers'

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<sup>61</sup>"Consumer Protection Charter" appended to its Resolution 543 (1973) <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta73/ERES543.htm>.

<sup>62</sup>T. Bourgoignie, *Consumer law and the European Community: Issues and Prospects in*: T. Bourgoignie and D. Trubek, "Integration through law: Consumer Law, Common Markets and Federalism in Europe and the United States", Walter de Gruyter 1987, 94.

<sup>63</sup>European Convention No 091 on Products Liability in regard to Personal Injury and Death [1977].

<sup>64</sup>Convention No 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data [1981].

<sup>65</sup>Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.

<sup>66</sup>Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Economic and Social Interests in 1982.<sup>67</sup> This document identified further steps to be taken in order to improve consumer protection, in particular through the establishment of ad hoc groups for particular areas of consumer law, and the development of international cooperation amongst Member States. However, the effects of the above documents on the development of consumer law and policy on the national level have remained “rather modest and limited in scope”.<sup>68</sup>

The activities of the Council of Europe in the area of consumer protection have been almost totally abolished, leaving the further development of the European regulatory regime of consumer protection to the European Union. Any activity of the Council of Europe with regard to the protection of economic interests is today hardly noticeable. Limited action can be observed with regard to the protection of the health of consumers, in particular with regard to pharmaceuticals, food and cosmetics. The Guidelines on Access to Housing for Disadvantaged Categories of Persons, which were developed by the Group of Specialists on Access to Housing,<sup>69</sup> emphasise the protection of vulnerable consumers as a disadvantaged category of persons. Member States of the Council of Europe are expected to guarantee affordable housing, as outlined by the European Committee for Social Cohesion.

The most enduring document of the Council of Europe is the European Convention of Human Rights (ECHR). The ECHR defines a set of fundamental human rights in Europe that are universal to all people. The ECHR does not explicitly provide for any specific consumer rights, however some such rights may be deduced from select ECHR provisions.<sup>70</sup> This is especially true with Article 6, Article 10, and Article 11 ECHR.

Article 6 ECHR guarantees the right to a fair trial within a reasonable period of time. This is important for the enforcement of consumer rights. Article 10 ECHR secures the freedom of expression that is relevant for the liberty of consumers and consumer organisations to form, express, and disseminate their opinions and other relevant information. Article 11 ECHR guarantees the freedom of assembly, which is essential to establish consumer organisations as associations that promote and protect consumer interests, and which are typically essential players in the system of enforcing consumer rights.<sup>71</sup> Whilst it is well-known that the Court’s case-law, particularly on Article 6 ECHR, enshrines a consumer law dimension, it is currently very difficult to identify the relevant cases and analyse them due to the inaccessibility of the data files.

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<sup>67</sup>Recommendation 947 (1982) on the protection of consumers’ economic and social interests.

<sup>68</sup>T. Bourgoignie, *Consumer law and the European Community: Issues and Prospects in*: T. Bourgoignie and D. Trubek, “Integration through law: Consumer Law, Common Markets and Federalism in Europe and the United States”, Walter de Gruyter 1987, 95.

<sup>69</sup>CS-LO (2001) 25 Policy Guidelines on Access to Housing for Disadvantaged Categories of Persons which was developed by the Group of Specialists on Access to Housing.

<sup>70</sup>I Benöhr, *EU Consumer Law and Human Rights* (Cambridge 2013), 50.

<sup>71</sup>*Ibid.* 49–50.



### ASEAN

The Association of Southeast Asian Nations (ASEAN) is a regional organisation of Southeast Asian countries. It was established in 1967. Today it consists of 10 countries.<sup>72</sup> Consumer protection is one of the policy areas where cooperation between Member States has only started recently, and its impact is still difficult to observe in practice.<sup>73</sup> Three areas of mutual cooperation amongst the Member States have been identified: information exchange, cross-border redress, and capacity building.<sup>74</sup> The ASEAN Committee on Consumer Protection (ACCP) is particularly significant as it runs a cross-border system of complaints and holds regular meetings.<sup>75</sup>

In general, the level of consumer protection in the region needs improvement. Therefore ASEAN may have an important role to play. At present only some of the countries have laws on consumer protection.<sup>76</sup> Where consumer law does exist, EU law has had a strong impact. For example, the new Vietnamese Law on Consumer Protection was inspired by the quality and long tradition of consumer protection in the EU acquis.<sup>77</sup>

### *The Asia—Pacific Economic Cooperation*

The Asia—Pacific Economic Cooperation (APEC) is a forum consisting of 21 economies whose main goal is the promotion of cross-Pacific cooperation. The APEC was established in 1989. It has been somewhat active in consumer protection, albeit with a limited scope and effects. Within the APEC Electronic Commerce Steering Group (ECSG), activities have been directed towards improving consumer protection in the area of e-commerce. Concurrently, the APEC Consumer Education and Protection Initiative (CEPI) Forum is focusing on strengthening consumer education in the APEC Member States.

### *The Organisation of American States*

The Organisation of American States (OAS) consists of 35 countries in North and South America. One of the main topics of its current Inter-American Specialized Conference on International Private Law (CIDIP) is how to improve consumer

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<sup>72</sup>Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam, see: <http://www.asean.org/asean/asean-member-states>.

<sup>73</sup>ASEAN, 'Consumer Protection', available at: <http://www.asean.org/asean/asean-member-states>.

<sup>74</sup>See ASEAN, 'Consumer Protection', available at: <http://www.asean.org/asean/asean-member-states>.

<sup>75</sup><http://aseanconsumer.org/about/>.

<sup>76</sup>MG Plummer and CS Yue, 'Realizing the ASEAN Economic Community: A Comprehensive Assessment' (ISEAS 2009), 73.

<sup>77</sup>C Nguyen, 'The Drafting of Vietnam's Consumer Protection Law: An Analysis from Legal Transplantation Theories (PhD Thesis University of Victoria 2011), 273.

protection and cross-border cooperation in the region. Consumer protection has been on the agenda of the OAS since 2009. An example of this is the Consumer Safety and Health Network (CSHN), which serves as an instrument for consumers and consumer authorities to exchange information and experiences regarding product safety.

### *Mercosur*

The Mercado Común del Sur (Mercosur) is a regional organisation of South-American countries. The Treaty of Asunción is its most important document, yet it does not contain provisions directed towards consumer protection. The subsequent Montevideo Protocol has not compensated for the deficiencies, but certain principles can be derived from some of its provisions. A notable example is the provision that allows the maintenance of national provisions aimed towards the protection of consumers from fraudulent trade practices that may present obstacles to cross-border trade.

These rules have not, however, been developed further. Due to the lack of a more comprehensive approach to consumer law and policy, the Member States of Mercosur display a high level of divergence in their regulatory regimes of consumer protection. This is made all the more surprising by the fact that South American countries have developed quite important consumer protection laws in the last three decades.

### *Caricom*

The Caribbean Community (Caricom), established in 1973, is a regional organisation that consists of 15 independent countries in the Caribbean.<sup>78</sup> The Member States of the Caricom have traditionally shown a high level of diversity when it comes to regulatory regimes of consumer protection.<sup>79</sup>

One entire chapter of the Revised Treaty of Chaguaramas, the fundamental treaty for the establishment of the Caricom, is exclusively dedicated to competition policy and consumer protection. The provisions provide the legal basis for harmonising consumer law in the region.<sup>80</sup> Caricom has established CARREX, a regional system of alert for non-safe products. The development of CARREX was supported financially by the European Union. It is based on the European system of information exchange on product safety (RAPEX). A common model for consumer law was eventually issued in 2011.<sup>81</sup>

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<sup>78</sup><http://www.caricom.org/>.

<sup>79</sup>Consumers in Caricom, available at: [http://www.caricomcompetitioncommission.com/images/pdf/consumers-in-caricom-csme\\_booklet.pdf](http://www.caricomcompetitioncommission.com/images/pdf/consumers-in-caricom-csme_booklet.pdf).

<sup>80</sup>See Chap. VIII of the Revised Treaty of Chaguaramas protection (Articles 184–186).

<sup>81</sup>Available at <http://www.caricomlaw.org/Details.aspx?EntryId=195>.

*The Gulf Cooperation Council*

The Cooperation Council for the Arab States of the Gulf (the Gulf Cooperation Council) is a regional organisation that consists of six countries in the Persian Gulf. It was established in 1981. Common consumer policy is one of the Cooperation Council's instruments for securing economic integration.<sup>82</sup> However, its effects in practice are still very limited. It is envisaged that a common Gulf Cooperation Council for consumer protection is planned to be established by the end of 2016.

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<sup>82</sup>B. Mueller, *Dynamics of International Advertising: Theoretical and Practical Perspectives*, 2nd ed, 2010, 310.



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