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CONSUMER PROTECTION Standards in Europe



Edited by
Sławomir Smyczek



Very interesting and practical book for consumers, managers as well researchers. This book is an up to date study treating about consumer rights protection. The reader can find there an explanation of fundamental concepts relating to consumer behavior, market rights, threats created by business, and then smoothly discover the most actual consumer protection issues and an European approach to increase the consumer rights protection and awareness. It is a definitely recommended to read and introduced in practice.

Dr. Fridrik Larsen
CEO at LarsEn Energy Branding and founder of Charge

This book is an exceptional manual designed for consumers, who should know their rights, and for students and professionals, interested in consumer rights protection. It covers all important topics related to consumer rights, from the basic concept of consumer behavior, throughout the companies' behavior and customer awareness relevance, to finish with the consumer protection practices. The structure of this book enables the reader to gain an advanced knowledge over the consumer rights protection issues and makes this book a must-have for all consumers.

Miguel Feldmann
Legal expert and adviser to the Portuguese Ombudsman

Consumer Protection Standards in Europe

Edited by: Sławomir Smyczek



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The term protection of consumers' interests falls into descriptive categories and is used to characterize a set of actions aimed at consumer protection facing threats against his/her rights and interests. However, the description of this concept has significant effects. Depending on the sphere of interests and the adopted perspective of observing phenomena and the current socio-economic situation, the point of view is changing into a set of actions which are important for the consumers' interests.

The idea of protecting consumers' interests appeared already in the nineteenth century under the conditions of the emerging market economy. The first steps to protect buyers against dishonest trader practices were undertaken by the developing cooperative movement. Consumer movement, like many social movements, was born in the period of rapid growth of industrialization in the second half of the nineteenth century. At first, the strongest development was in the USA. Then, the protection of consumer's interests was developed at the level of the United Nations and became one of the European Union's priorities.

It is worth mentioning that European integration has set the problem of protecting consumers' interests in a new light. We should also emphasize that due to the fact that the consumer is a weaker party in the market game, his/her interests are not threatened along with the tightening of relations within the European Union. The development of the European market, but also of the global one, changes only the goal and the direction of the threats against consumer's interests.

Among the prerequisites of protection of consumers' interests, there are usually three groups: economic, legal and social. Economic reasons relate to the massiveness of trade in goods and the monopolization of the market and the so-called consumer atomization and abuse of marketing instruments, as well as globalization of the economy, which is associated with decreasing and limiting the role of the state on market. The social founda-

tions of protection arise from the need to protect life and achieve human rights. Here, in particular, care for health and standard of living, consumer safety, care for the natural and social environment and the level of consumer awareness are considered important. The premises for the legal protection of consumers' interests arise, inter alia, from the compulsory situation in which consumers find themselves, the lack of proper preparation for establishing a contractual relationship, representing the smaller property potential, as well as limited possibilities in terms of time and resources that can serve to satisfy their needs. One should also add limited communication of legal regulations and poor knowledge of the principles of shaping the content of the legal relationship established by the consumer. Therefore, the legal prerequisites for protection concern areas of activity in which the law is not adjusted according to the conditions of a market game.

The source of unfavorable phenomena for the consumer – degrading it in the legal, economic and sociological sphere – is the mass character of trade. This fact results in the loss of important sovereignty for the consumer. The market economy creates many economic and social problems. Technical progress, mass production, degradation of the natural environment, huge wealth of market offer of goods and services, flood of information, intense promotional activities of companies are a threat against consumer sovereignty and his/her interests.

It is also worth pointing out the reasons for the weakness of the consumer as a market participant. The consumer is urged to meet his/her needs, which often means that he/she is ready to accept the conditions proposed to him/her. He/She also has a weaker position with respect to the group of producers and sellers in terms of economy, time and mental resilience. Moreover, the consumer does not have such knowledge of commodity, technical, economic and legal matters as producers or traders. He/She has a threefold role as: recipient of promotional activities of enterprises, buyer of goods and services, and user of purchased products.

Appreciating the importance of the issues of consumer's interests protection under the current socio-economic circumstances, taking into account the ongoing globalization processes and ever closer European integration, attempts have been made to characterize and assess consumer protection standards in Europe.

This book will provide the reader with the necessary information on the topic of the European Union, as well as for the latest consumer empowerment on contemporary integrated European market. The book is written by European researchers, for whom the problem of consumer rights protection plays a particularly important role and who want to improve the awareness of threats that consumers face on the modern market.

The primary target audience of this book will be students who study business and management and who will be responsible in future for the development of durable and long-term relationship with consumers. The book will be also useful for consumers on the European market. Academic researchers as well as practitioners from the business field should be interested in this book. This book should help them to rethink what they do, how they are doing, to encourage them to create effective relationships with consumers and protect their rights.

The entire work is divided into three parts. The first part provides an introduction to the topic and focuses on the understanding of consumers, their market behaviours as well as the consumption on the European market. This part includes chapters describing different roles played by the consumers, their market behaviours, consumer decision making process as well determinants of consumer behaviours. This part also includes description of the concept of consumption and of the consumers' values. Finally, the reader can find an analysis of the importance of consumer awareness phenomenon. Part two presents selected aspects of contemporary companies' behaviour and issues related to threats against the consumer created by companies on contemporary European market. Furthermore, the authors tackle the problem of competition as well the companies' ethical and non-ethical behaviors. This part also includes several chapters dedicated to companies' practices requiring consumers' protection and consumer awareness and their impact on businesses. And finally, part three is dedicated to consumers and their protection standards in Europe. One can read about the problems regarding consumer policy on European market, including models and organizational structure. In addition to it, there are chapters describing consumers' rights, institutions of consumer rights protection, different law and regulations related to classical and digital market, tangible

goods, and services sector. The last part ends with several issues related to building consumer awareness.

The book itself has been the outcome of a project named Enhancing quality in innovative higher education about consumer awareness – Consume-aware, co-funded by the Erasmus+ Programme of the European Union. This project was created by eight partner universities from the Dukenet International Network, including: University of Economics in Katowice – project leader, Howest University of Applied Sciences, University of Bucharest, Université Savoie Mont Blanc, Seinäjoki University of Applied Science, Budapest Business School, University of Trento, and University of ISIK.

For the publication of this book the proofreading and the terminology glossary were provided by Diana Ionita and Daria Georgiana Protopopescu from the University of Bucharest. Special thanks for the reviewers' valuable support – Kim Fam from University of Wellington in New Zealand and Antonino Galati from University of Palermo in Italy – whose professional contribution gave this book its finished form.

Sławomir Smyczek

PART I

CONSUMERS AND CONSUMPTION IN EUROPE – GENERAL CHARACTERISTICS AND CONSUMER AWARENESS IMPORTANCE

Consumers and their behaviour on the market

Agnieszka Tetla

Introduction

In its original form, “consume” meant to destroy, rob, and conquer. It is a word saturated with violence and until the end of the 20th century it had only negative connotations. The transformation of consumption from evil to virtue is one of the most important, although least researched, phenomena of the 20th century. At the turn of the century, economists noticed that most of the working people preferred to earn only enough to satisfy their basic needs and few luxuries, while they valued more the time off work than additional income achieved thanks to the so-called overtime, it means that the phenomenon of mass consumption did not occur spontaneously, and in fact was caused by pressure from the business.

The aim of this chapter is to explain the phenomena of consumer behaviour and contains four subchapters. In the first one the concepts of consumer and consumer behaviour are explained, including the rationality of consumer behaviour. Then, we present a broad classification of determinants of consumer behaviour. The third subchapter deals with consumer decision-making process and the roles it can take. In the final subchapter we show the consumer risks and dilemmas, including irrational behaviour, moral hazard, unethical consumer behaviour and consumer misbehaviour.

1.1. The concept of consumer behaviour

Consumer can be considered as an individual who has consumption needs and tend to satisfy them. In order to satisfy these needs the individuals use goods and services purchased on the market or produced by its own household, or received from other sources (Kieźel, 2003: 20).

Changes in life conditions and generally process of civilization result in new consumer characteristics. Consumers change their approach to what they can find on the market and get more rational in their choices, as a result it is possible that in the future they will not be so likely to express loyalty to one product or brand (Mazurek-Łopacińska, 2003: 26).

Consumers appreciate the value of building social connections and this network is getting new meaning, different from the traditional communities. New social bonds are more and more likely to focus on groups of friends and other kinds of relations satisfying the need of belonging. As a result, consumers value the products that simplify the social interactions (Mazurek-Łopacińska, 2003: 28).

Another new consumer characteristic is his multicultural dimension, as an effect of his/her multicultural environment. On one hand, there is a strong tendency to follow the globalization and global strategies of the brands, on the other hand, however, consumers are likely to protect their cultural identity and attach to their traditions (Mazurek-Łopacińska, 2003: 28).

Next contemporary phenomena are the increased consumer mobility. With the general development consumers have more possibilities to travel and to move on field of social life as well (Mazurek-Łopacińska, 2003: 29). Also the nature and its connection with humans recently get a new dimension. Consumers show more attention to the environmental problems, want to be more “green” and to consume “green products” (Mazurek-Łopacińska, 2003: 29).

Understanding and analysing consumer behaviour seem to be crucial for the long run marketing program. It is necessary in the analysis of market-opportunity, the selection of target market and the creation of a company’s market strategy. Consumer behaviour can be considered as all the activities connected with obtaining and using products and services, as well as

disposing them and decisions before and after these activities. Therefore the consumer behaviour has two possible reactions: purchase and consumption (Engel, 1993: 4).

Another definition describes consumer behaviour as all activities and perceptions of consumer, connected with preparation to product choice decision-making, making choice over the particular product and the consumption. Consumer behaviour consist then on three types of reactions: communication, purchase, consumption (Hansen, 1972: 15).

Some approaches treat consumer behaviour as caused by individual needs of consumer and all the activities that appear during the preparation to make a decision, as well as during the consumption itself. This approach explains consumer behaviour as an attitude of the consumer during the process of buying and consuming intention creation, and therefore during changing the need into demand and satisfying this need (Rudnicki, 2000: 15). In a similar way, M. Pohorille treats consumer behaviour as a manner of putting the needs into a hierarchy, choosing goods and services necessary to satisfy them and using the products that consumer possesses (Rudnicki, 2000: 15). Majority of definitions are similar and treat the term of consumer behaviour as the process of obtaining the resources and consuming them in order to satisfy the consumer's needs (Rudnicki, 2000: 16).

The consumer behaviours may be divided according to the institutional arrangement – market and household. Behaviour on the market – consumer behaviour consists of all the activities connected with the decision-making process over the purchase and results in decision assessment and information exchange. The decisions taken by consumers include choice of goods or services, quality features and purchase conditions. The consumers' decisions then are the effects of consumption preferences (Kieźel, 2003: 20).

The behaviours on the field of household are connected mostly with using goods and services, however the household itself also can produce some products. The activities on this field include physical modification of some products to gain new consumption qualities, repetitive acts of single use of goods and services, using the durable goods and using the dwelling space (Kieźel, 2003: 24).

Consumer behaviours on the market are extremely diversified. The general classification divides behaviour into intended behaviour and unintended behaviour. Intended behaviours are always reasonable and acted consciously, whereas unintended behaviours are usually under the influence of an impulse, not always reasonable, very often do not reflect either the attitudes or the needs of consumers (Rudnicki, 2000: 32–33).

Both intended and unintended behaviours may be voluntary or compulsory. In the first case consumer acts according to his own needs, in contrast with compulsory behaviour which comes from a necessity. A further classification divides voluntary and compulsory behaviour into rational and irrational. It should be underlined that usually the forced behaviours are more likely to be irrational (Rudnicki, 2000: 33).

Rational behaviour consists of such activities which allow an individual to maximize its satisfaction. In other words consumer acts rationally when with a particular level of income he tends to buy such amount of goods and services that will give him the possible highest level of satisfaction. Such behaviour is based on three assumptions (Rudnicki, 2000: 33):

- ✓ consumer is conscious of his/her preferences and is able to some extent, to describe his/her needs,
- ✓ consumer is able to classify his/her needs according to their intensity,
- ✓ consumer is making choices in order to maximize his/her satisfaction.

Irrational behaviour is internally incoherent or stays in conflict with consumer's interest, of what the consumer is aware from the moment of acting in a certain way. Sometimes the irrationality is defined as being extremely connected with someone's needs and attitudes even when there is a clear evidence that they are harmful or wrong. The irrational behaviour of consumer comes from lack of proper consideration, imitating, snobbism, impulses and motives originated from consumer's subconscious (Rudnicki, 2000: 33).

The extend of the rationality, according to J. O'Shaughnessy depends on (Kieźel, 2004: 22–23):

- ✓ rationality of a need itself,

- ✓ whether among the considered brands or products there is the best purchase of the consumer,
- ✓ whether the consumer has all information needed to make a choice,
- ✓ rationality of information possessed by the consumer.

The border between rationality and irrationality of consumer behaviour is blurred. However, consumer behaviour is usually rational because consumers are able to explain their choices of goods and services, their decisions on the market and in their households on (Kieźel, 2004: 23).

Consumer may be considered as the most important person on the market since according to his needs companies design and produce goods and services, both tangible and intangible. Understanding consumer and his behaviour becomes then crucial for companies, in fact proper management of consumer behaviour becomes the decisive factor for the companies' future.

1.2. Determinants of consumer behaviour

Consumer behaviour is a very complex phenomenon and is influenced by various variables. Although it is difficult to find every determinants of consumer behaviour some variables have been identified. The classification of determinants is shown in Figure 1.1.

Macroeconomic determinants are often neglected, however such determinants like level of national income, its changes, disposition, economic transformation, inflation, European integration are a kind of background for consumer behaviour and its other determinants, influencing them in an indirect way (Kieźel, 1999: 106–107).

All other determinants are divided into two main groups in terms of their dependency on the attitudes toward them or some other factors. In this way consumer behaviour determinants are classified into objective and subjective ones. Objective determinants are not under the influence of consumer's approach, opinion, however the subjective ones may be interpreted in many ways according to individuals currently assessing them (Kieźel, 1999: 106).

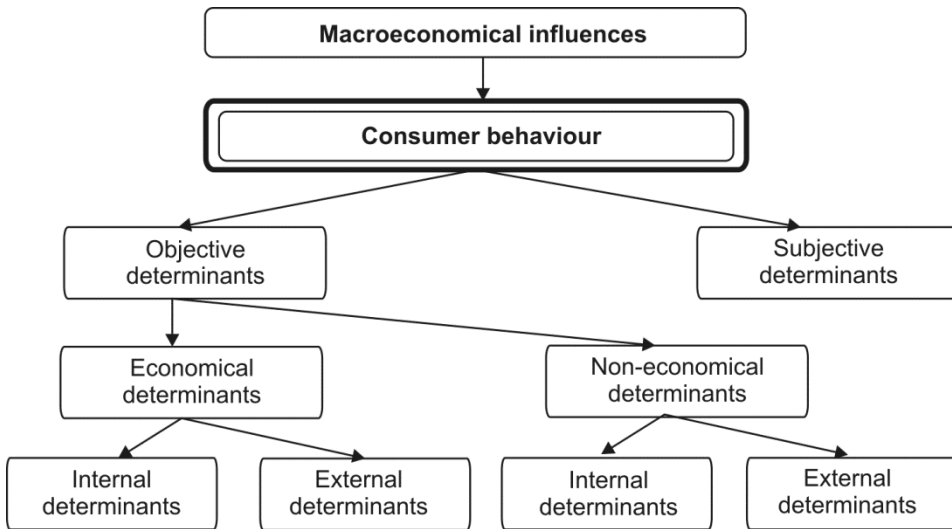


Figure 1.1. Determinants of consumer behaviour

Source: (Kieźel, 1999).

Moreover, on the field of objective determinants, the further classification distinguishes two groups – economic and noneconomic determinants – in terms of their connection with economics. Both groups are divided again into two classes – internal and external – according to the dependency on consumers' will (Kieźel, 1999: 106).

Internal economic factors include the income of consumers, credits, savings, level of natural consumption, house equipment, prior level of consumption and its structure. External factors in these groups are supply, prices, economical infrastructure, system of information and sales politics (Kieźel, 1999: 107).

In fact, the level of income is the most important determinant shaping the consumption, especially in medium and long term. Incomes of consumers usually fluctuate according to the season, within years or over a lifetime. The expected average level of income in the future shapes consumption habits, however the size of this influence varies for particular goods. Goods may therefore be divided into two classes, where the first one contains products and services that people buy when their income is on the satisfying level, however will give up its consumption in poorer times. The second

class includes goods that consumers consider as not worth of the financial or psychological cost of giving them up in the future, despite pleasure of temporarily higher level of its consumption. Consumers are affected also by their previous level of income. Consumers may be attached to some goods bought in higher income period and will not be likely to change this consumption even when their financial situation is getting worse. This behaviour may be rational, connected with higher quality of this product, or irrational, when the particular consumption habit should be abandoned.

Income influences the consumption before the price does, what is more, enables the demand and consumption analysis in terms of many additional characteristics of consumer groups, finally explains the changes of other factors, like prices or demographic phenomena (Kieźel, 1999: 116). The level of income influences also the level of savings and, as a matter of fact, the level and structure of further consumption.

The increase in incomes of consumers results in increase in demand for all sorts of goods. The type of the goods is determined by the affluence of the consumer. The buyer with lower incomes will increase the demand for basic goods, whereas the increase in higher incomes results in the increase in demand for luxury goods (Roszkowska-Hołyśz, 2013: 336).

An important issue is also the family income. Family income refers to the aggregate income of all the members of a family. Family income influences the buying behaviour of the family. The surplus family income, remaining after the expenditure on the basic needs of the family, is made available for buying shopping goods, durables and luxuries (Ramya & Ali, 2016: 79).

According to the Marshall law, the demand for a particular product increases with the decrease in its price, which is another important determinant of consumer behaviour. However the correlation between these two variables is not proportional and depends on such determinants like available substitutes and the purchasing power of consumers. The sensitivity of the connection between price and demand is higher when the income is low, and, as a result, when the level of income increases, consumers become less dependent on price (Kieźel, 1999: 126).

The amount and diversity of products enable more ways of satisfying of needs, on another hand then limited supply may restrict the consumption

and lead even to the absolute elimination of consuming some kinds of goods. The supply allows consumers to satisfy their needs but, at the same time, these needs are determined by the consumers found on the market. The supply can create some new needs and motivate the consumers to take actions to buy new goods (Kiežel, 1999: 130).

The next important economic factors are the marketing instruments, which are frequently able to change the role of income and price as well as the rationality of consumer behaviour (Kiežel, 1999: 138). Marketing communication including sales, advertising, public relations, direct marketing and promotions may influence the consumer's desire for some products. All the marketing instruments provide persuasive information (Bennett, 2010: 122).

Internal non-economic factors consist on demographical factors like age, gender or household size, socio-professional determinants such as education or profession, and finally social factors such as family, reference group or opinion leader. External noneconomic factors distinguish such determinants like cultural, geographical and social life organizational determinants (Kiežel, 1999: 107).

Consumers are very often segmented according to their age. This approach is logical since the same age groups share some common needs, attitudes, feeling and other characteristics. Age therefore determines what consumers need, what their role is in the decision-making process, it also influences reasons of purchasing; in the case of teenagers, for example, purchase is often connected with socializing. Age also influences the reactions of consumers on advertising and messages disseminated by the companies (Hoyer & Macinnis, 2009: 303).

The marital status and household size also have a huge impact on the consumption. Single individuals are more likely to make decisions according to their own preferences unlike the family members who put the family needs on the first place. Single people have more free time to spend on pleasure, on the other hand they cannot share the in-home responsibilities and it is more possible that they will spend more money on some facilities, such as meals in restaurants or laundry (Kiežel, 1999: 144).

Gender refers to the biological characteristics which define a consumer as female or male. Consumption activities are gendered and gender itself

may be considered as a filter through which people experience their social world (Parsons & Maclaren, 2009: 105). Gender of consumers determines not only their needs but also influences the perception of some products and services (Kiežel, 1999: 145).

Such determinants like location, climate, environment, pollution may play an important role in consumer behaviour. There is, for example, a huge difference between the consumption patterns in villages and cities, according to the level of infrastructure development. The pollution, on the other hand, may influence the consumption of some detergents in places where its level is high (Kiežel, 1999: 145–146).

Environment may be analysed according to two dimensions. The first dimension includes the physical environment: weather, geography and time. Some seasonal influences may shape the consumption of some products, like snowboards during winter. Technological environment has an impact on how consumers behave and what their purchases are. Some technological innovations are able to make the life easier, more productive and healthier life (Bennett, 2010: 121).

Socio-professional determinants like level and type of education and profession have also a huge impact on consumer behaviour. Education generally shapes some needs of consumers, the level of education also raises the need of cultural experiences, transportation or personal care goods. Level of education also changes the consumption structure and habits, housewives with higher education are more likely to involve other family's members in meals preparation. Professional life influences the welfare of consumers and their households and of course shapes the particular needs, like need of uniform or monthly tickets (Kiežel, 1999: 146).

Another noneconomic determinant is culture. Culture is the most fundamental determinant of a person's want and behaviour and it may be defined as all human creation, tangible and intangible, values and behaviour patterns accepted in a community. The presence of culture satisfies some needs of the society as well as the needs of particular individuals, culture establishes what is good and important and in this way introduces an order, which is a basis of the society. It is passed on from one group member to another, and in particular it is usually passed down from one generation to

the next; it is learned, and is therefore both subjective and arbitrary. Culture can change over a period of time, although such changes tend to be slow, since culture is deeply built into people's behaviour. Culture influences the preferences concerning consumption of some goods, especially food. Every nation has its own cuisine and does not accept some products, like pork for Muslims. Culture influences also the purchasing itself like using a credit card, bargaining, place and frequency of buying (Ramya & Ali, 2016: 79; Kiežel, 1999: 149).

Another sociological factor is the social class, division of individuals in the society into a hierarchy of distinct status classes, where members of each class have the same status. Social class may be defined then by the amount of status that its member have in comparison with members of other social classes. Some researches proved that a key ingredient of status is consumer's possessions. Therefore, consumers very often compare their material possessions with those possessed by others and through the consumption of particular group they try to reach the same level in the hierarchy (Shiffman, Kanuk, Hansen, 2008: 350).

Social groups, defined as group of individuals, cooperate during a period of time in order to reach some common goals or satisfy some common needs, and may absolutely change behaviour of particular consumers, making them following some behavioural schemas (Kiežel, 1999: 149).

The last social determinant of consumer behaviour is family. Consumer usually represents the needs of his/her family, reflects the family's preferences and attitudes of other members. What is more, it is the family who shapes proper values, attitudes, and determines personality and lifestyle of the youngest members of the family (Kiežel, 1999: 158).

Consumers differ from one another and even when they are in the same situation, under similar economic or noneconomic conditions they will behave in a different way. It is important to consider the subjective determinants as having a significant influence on consumers. This category includes motives, perception, habits, attitudes, customs, learning process, personality, tradition and many other (Kiežel, 1999: 107).

Perception is a process of selection, organizing and interpretation of stimuli into a meaningful picture of the world. Consumers may be exposed to the

same stimuli in the same situation, however the way they recognize, select, organize and interpret these stimuli is an individual process based on their needs, values and expectations (Shiffman, Kanuk, Hansen, 2008: 351).

Learning process is connected with perception, consumers may learn and make conclusions only because they perceived something. There are two learning theories: according to the behavioural theory, learning process appears as a result of some incentives and is connected with a system of rewards and punishments. The cognitive theory, on the other hand, assumes that the basis for learning is the information processing and motivation (Kieźel, 1999: 168). It is in the modern world that the media, especially the Internet and television, play the essential role in the learning process of consumers and contribute to changes in their behaviours (Roszkowska-Hołyś, 2013: 344).

Habits are the effect of the learning process and repetition of some behaviours leading to some positive results. Habit is an ability to react in a stable way for particular incentives. Such behaviours are automatic and do not demand concentration. Habits are usually important in case of routine purchases with limited attention of consumers (Kieźel, 1999: 168).

There are many determinants of consumer behaviour and every consumer is under the influence of different factors. The intensity of a particular determinant also differs significantly from individual to individual; nevertheless, some general trends may be described and help to understand consumer behaviour.

1.3. Consumer decision-making process and types of consumer decisions

There are several consumer-related models of decision making (Matin, 2006: 130):

- a) Economic Man Model: Customer is characterized as an Economic Man and he makes rational decision.
- b) Passive Man Model: It is opposite to the Economic Man model and describes the consumers as impulsive and irrational purchasers. They are ready to yield to the tactics of the consumer. The salesman takes the consumer through the following stages: (AIDA):
 - Attention,
 - Interest,
 - Desire,
 - Action.
- c) Cognitive Man Model: It portrays the consumer as a thinking problem solver. It focusses on the process by which consumers seek and assess information on selecting brands and retail outlets. The information seeking is stopped as soon as sufficient information is received. It develops shortcut decisions. The consumer avoids Information Load i.e., too much information.

An important issue in the case of the consumer is his/her decision-making process and the roles that it can play while making decisions. Decision making process can appear unless a set of possibilities can be distinguished; the object of decisions are then goods, actions or problem solutions, the subject is one person or group of decision makers. In the case of consumers, the main decision is whether the purchase is necessary. Then, new questions appear – what to buy, which brand to choose, when and where to buy and who will make a purchase. As a matter of fact, decisions taken by consumers usually focus on needs and ways of satisfying them (Rudnicki, 200: 188–189).

In a simple approach on consumer decision making one can distinguish five stages (Matin, 2006: 131–132):

1. Problem recognition: Problem recognition occurs whenever the consumer sees a significant difference between his or her current state of affairs and some desired or ideal state. The consumer perceives there is a problem to be solved, which may be large or small, simple or complex.
2. Information search: Once a problem has been recognized, consumers need adequate information to resolve it. Information search is the process by which the consumer surveys his or her environment for appropriate data to make a reasonable decision.
3. Evaluation and alternatives: A consumer evaluates the products in terms of their ability to fulfil the needs. The alternatives actively considered during a consumer's choice process are his or her evoked set. The evoked set comprises those products already in memory (the retrieval set), plus those prominent in the retail environment.
4. Purchase action: The actual purchase is made from store after consideration of a number of factors.
5. Post-purchase behaviour (followed sequentially): This is how a consumer feels after using the product, i.e., satisfaction or dissatisfaction.

Within the decision making process consumers can take different roles, mainly:

- ✓ initiator,
- ✓ adviser,
- ✓ decider,
- ✓ buyer,
- ✓ user.

The Initiator is a person who initiates the idea of making a purchase of goods. The Adviser is that individual who helps during the making decision process, provides information needed to evaluate alternatives and gives opinion on them. The Decider is a person who influences all elements of decision about the product or service to be purchased, place of purchase etc. The Buyer is in charge to buy a good chosen by the Decider, whereas the User will be a consumer of that particular product or service (Kotler & Keller, 2005: 200).

Consumers do not follow the general decision sequence at all times and the process may vary according to the time available, levels of perceived risk and the degree of involvement a consumer has with the type of product, therefore there are three types of problem solving (Rawal & Upadhyay, 2017: 24):

1. **Extended Problem Solving (EPS):** Consumers who want to purchase a car or house are ready to spend a lot of time on external search to find a solution that satisfies, to the highest level possible, the evaluative criteria previously set by them. This activity is usually associated with products that are unfamiliar, where getting a direct experience and hence knowledge is weak, and where there is substantial financial risk associated.
2. **Limited Problem Solving (LPS):** When a consumer has experience of a product, this means that greater use of internal memory-based search routines can be made and the external search can be limited to getting latest information or ensuring that the finer points of the decision have been investigated.
3. **Routinised Response Behaviour (RRB):** For many products the decision process will consist only of an internal search primarily because the buyer has made a number of purchases before and has got a great deal of experience. Therefore, little time or effort will be spent on external search activities. Low-value items which are habitually purchased come into this category, for example toothpaste, soap, tea leaves, tinned foods and confectionery items.

1.4. Consumer risks and dilemmas on market

There are several consumer behaviours that cause consumer risks and dilemmas on market. These behaviours very often are harmful for the consumers themselves, as well as for their environment.

The first consumer risk to be mentioned is an irrational behaviour. Irrational behaviour is internally inconsistent and contrary to the best interest of the consumer. Irrationality means that the consumer has needs or adopts attitudes in defiance of evidence demonstrating their harmfulness and erroneousness. Consumers act irrationally when they (Zalega, 2015: 138):

- ✓ lack clearly defined preferences and, consequently, are not able to sort out all combinations of consumed goods,
- ✓ have difficulty identifying their needs,
- ✓ are not able to make internally consistent choices to maximise utility drawn from consumption, which in turn means a breach of the assumption of completeness of the preferences.

Nowadays, consumers are becoming less stereotypical, exhibit proactive attitudes, are rebellious and increasingly difficult to satisfy. Emancipated and full of contradictions, a contemporary consumer knowingly takes inconsistent actions with a view to emphasising his individuality. Frequently, the choices of an irrational consumer are driven by imitation, snobbery, impulses and motives deeply rooted in subconsciousness, which the consumer most often fails to realise, rather than by cool-headed calculation. This proves merely that consumption decisions made by consumers are not always an outcome of acts of informed choice, but are often taken under the influence of reflex responses to external stimuli or specific situations (Zalega, 2015: 138).

The examples of irrational consumer behaviour can be observed easily during the so-called Black Fridays. Black Friday shoppers are dedicated – they sacrifice sleep, football games, other activities, and responsibilities in order to make the early bird sales. People are especially vulnerable towards irrational tendencies when they are tired and overwhelmed, which is called a depletion state. In a state of depletion, people just do not have enough willpower to resist temptation or the cognitive faculties to make complex decisions. On Black Fridays consumers leave their “pain of pay-

ing” behind. Many shoppers tend to begin with the purchase of a large ticket item, like a TV or computer. After the big purchase, every \$10 flash stick, \$11 dollar t-shirt, or \$13 kitchen knife, will not lead to the “pain of paying” that keeps people from buying every random thing on aisle during the rest of the year. Moreover, consumers are in a careful “deliberative” mind-set before purchasing an item – carefully weighing the pros and cons. Yet, after the first purchase, consumers make purchases more readily. Consumers associate the Black Friday with great deals, they are less likely to notice then that not every sale is a bargain. Finally, as everyone is shopping during the Black Friday, consumers stop to feel guilty while buying useless things (Ariely, 2014).

Another consumer risk is a moral hazard. This term refers to a situation in which one party gets involved in a risky event with awareness that it is protected against the risk and the other party will incur the cost. An example can be observed on a financial market, where there is a risk that the borrower might engage in activities that are undesirable from the lender's point of view because they decrease the possibility that the loan will be paid back. It occurs when the borrower knows that someone else will pay for the mistake he/she makes. This, in turn, encourages him/her to act in a riskier way (The Economic Times, 2014). Moral hazard is also a term which describes how consumer behaviour changes when people are insured against losses, for example in case of car insurances. Consumers are more likely to drive in a more dangerous way when they know that they will not be obliged to fully cover the damages caused (Thoma, 2013).

The third behaviour which may cause consumer risks and dilemmas is an unethical consumer behaviour. According to V. Mitchell et al. the unethical consumer behaviour should be defined as direct or indirect actions that cause businesses or other consumers to lose money or reputation. Muncy and Vitell (1992) identified three key factors influencing ethical decision-making, firstly the role played by consumers (for example, whether their behaviours are active or passive), secondly perceived illegality of behaviour (for example, deceitful and dishonest actions), third perceived importance of consequences (for example, if a given action can be easily noticed by others) (Mitchell, Balabanis, Schlegelmilch, Cornwell, 2009: 396; Wilkes, Burnett, Howell, 1986: 47–56).

The last group of consumer risks and dilemmas constitutes the consumer misbehaviour. Consumer misbehaviour may be defined as behavioural acts by consumers, who violate the generally accepted norms of conduct in consumption situations, and thus disrupt the consumption order. It represents the negative side of the consumer. They are part of people's conduct in their role as consumers within exchange situations, which are a key component of the overall culture of consumption. Negative consumer behaviour is a significant phenomenon which affects both companies and consumers (Fullerton & Punj, 2004: 1239).

Consumer misbehaviour may be divided into four main groups among which particular behaviours have common reasons and characteristics (Solomon, 2010: 31):

- a) consumer terrorism,
- b) addictions,
- c) consumed consumers,
- d) consumer frauds.

Generally, the phenomenon of consumer terrorism appears when consumers destroy the image of a particular brand. Such behaviour can appear as an answer to bad consumer service or dissatisfaction. In this case consumers express their dissatisfaction publicly, among friends, relatives or on blogs and webpages. There are several forms of consumer terrorism, it can refer to a situation when consumers insert some unwanted items or substances to food they are going to consume, just in order to avoid payment or receive an reimbursement from sellers. Another form of consumer terrorism is when consumers spread unjustified negative information about, for example, service providers and intentionally harm their image.

Another problem of consumer behaviour is represented by addictions. Consumer addiction is a physiological or psychological dependency on products or services (Solomon, 2010: 31). Consumers' excessive alcohol consumption in alcohol establishments has negative effects on their social and physical wellbeing. For owners of alcohol service establishments, alcohol-related incidents often generate tremendous costs and if such situations occur on a daily basis, the company's image can be damaged.

Another disorder in consumer behaviour is compulsive consumption. This term refers to repetitive shopping, often excessive, as an antidote to tension,

anxiety, depression or boredom (Solomon, 2010: 32). This behaviour appears frequently as a result of low self – esteem, consumers treat shopping as a way of reaching some social level and respect (Shoham, Makovec, Brencic, 2003: 127).

Another negative phenomenon is “consumed consumers”. Consumed consumer are people who are treated as commodities and become subjects of businesses (Solomon, 2010: 32). This phenomenon includes prostitution, the trade of organs, blood or any other part of human body or babies for sale.

Finally, the consumer theft and fraud should be mentioned. One of the biggest problems on every market is shoplifting (Solomon, 2010: 31). Consumers often decide to steal a product instead of purchasing it. All the time, the reasons are different, however surprisingly not only because of a hard financial situation. Shoplifters are often quite rich people seeking for some excitement. Frequently the stealers are teenagers tending to get the respect among their peers. The problem is common and causes serious losses for the companies. Another type of consumer theft and fraud is illegitimate complaining behaviour. This term refers to a deliberate, post-service, attempting to gain monetary reimbursement or reparation without justification through appealing in writing to centralized customer service departments (Harris & Reynolds, 2004: 344).

Some general reasons of misbehaviour can be distinguished (quoted in Ronald & Girish, 1997):

- ✓ Calculating opportunism – consumer misbehaviour is the outcome of a decision-making process based upon conscious and rational assessment of the expected benefits and related risks (Becker, 1968). The characteristic feature of this situation is the absence of ethical constraints.
- ✓ The absence of moral constraints – the level of moral sensitivity varies among the consumers. A few psychologically troubled consumer misbehavers may lack any sense of moral responsibility (DSM-III-R, 1987: 342–344).

- ✓ The search for thrills – basic motivation for misconduct (Katz, 1988). Misbehaviour permits thrilling defiance of legal and moral strictures and of imposing institutions; the risk of being caught only heightens the exquisite tension.
- ✓ The frustration caused by unfulfilled aspirations as consumers' desires have become over stimulated to the point where it is difficult to realize all of them (Merton, 1968).
- ✓ Differential association – deviant behaviour learned in intimate groups, especially those made up of teenagers and adult repeat offenders (Sutherland, 1934).
- ✓ Psychological problems and abnormalities – deeply disturbed, abnormal, psyches may erupt in deviant behaviour like exhibitionism, brutal treatment of other consumers and marketing employees (DSM-III-R, 1987).
- ✓ Provocative situational factors – some external factors, like crowding, unsettling amounts of heat and noise, enticing displays, seeming absence of deterrence may lead to aggressiveness towards other consumers and towards marketers (Moore, 1984).
- ✓ Negative attitudes towards exchange institutions – perceived impersonality increases the probability of consumer misbehaviour, for example a size of institutions (Kraut, 1976; Moore, 1984).

The most comprehensive classification of consumer misbehaviour seem to be the Lovelock's "jayconsumers" (Lovelock, 1994; 2001 cited John & Grove, 2013: 106; Harris & Reynolds, 2004: 342).

Table 1.1. Jayconsumers typology

Type	Description
Thieves	Customers who have no intention to pay for a service.
Cheats	Customers who exploit organizations' goodwill or guarantees by feigning dissatisfaction or in order to avoid payment or other desirable outcomes.
Rule breakers	Customers who violate the directives established by a company to protect customers and/or workers or to facilitate the smooth operations of the service.

Belligerent	Customers who act in an argumentative or aggressive way towards service personnel.
Vandals	Customers who mar Or physically abuse the service setting, undermining its aesthetic appeal, operational excellence, and/or safety. They intentionally deface organizational property.
Family frauders	A kind of the belligerents, who quarrel with other customers and family members.
Deadbeats	Customers who become delinquent in their payment for services already provided.

Source: (Lovelock, 1994; 2001 cited John & Grove, 2013: 106; Harris & Reynolds, 2004: 342).

Another interesting approach is provided by Berry & Seiders, who indicate types of unfair consumers (Berry & Seiders, 2008: 31–35).

Table 1.2. Unfair consumers typology

Type	Description
Verbal abusers	Individuals who attack employees in an offensive and disrespectful manner whether in face-to-face transactions, over the telephone, or via the Internet.
Blamers	Individuals who blame a company's products, policies, and people at all levels for any perceived shortfall.
Rule breakers	Individuals who readily ignore policies and procedures when they find them to be inconvenient or in conflict with their own goals. They ignore the honour code which other customers follow.
Opportunists	Individuals who look for easy paths to personal financial gain. This customer's modus operandi can be demanding compensation by fabricating or exaggerating problems or defects in a product or service.
Returnaholics	a hybrid, with traits common to rule breakers and opportunists but engaged in only in returning products to stores. Returnaholic never intends to keep the product to begin with.

Source: (Berry & Seiders, 2008: 31–35).

Conclusions

Consumer behaviour is a complex phenomenon, which can be analysed from various perspectives. It is important, however, for companies but especially for consumers to understand this concept. Consumers must be aware of their behaviours and the risks and dilemmas they may bring about. The companies try to discover consumers' desires and motives in order to manipulate their decisions and only an aware consumer may face this challenge.

Consumer can be considered as an individual who has consumption needs and tends to satisfy them. In order to satisfy those needs the individuals use goods and services purchased on the market or produced by its own household, or received from other sources, which refers to what we call the consumer behaviour. There are various factors influencing consumer behaviour, including internal or psychological factors, social factors, cultural factors, economic factors and personal factors. All of these determinants shape consumer choices and lead to a rational or irrational behaviour.

The most important part of this chapter seems to be the last one, which is dedicated to consumer risks and dilemmas. In times of raising consumerism, excessive consumption, many people choose to reject moral standards and get engaged in questionable behaviours. There are four groups of behaviours which may put the consumers at various risks or cause many dilemmas: irrational behaviour, moral hazard, unethical consumer behaviour and consumer misbehaviour. Irrational behaviour may cause high financial losses, when consumers decide to perform excessive shopping, not caused by rational evaluation of needs and possible options of satisfying them, but driven by imitation, snobbery and other impulses. Moral hazard on the other hand can be even dangerous for consumer's life, especially if taking into consideration their life insurances. Unethical behaviour is negative in its nature, it violates what is commonly perceived as good and right. Unethical behaviours tend to harm other individuals and may lead to a strong feel of guilty. Finally, consumer misbehaviour should be perceived as a behaviour which violates the generally accepted norms, set by the society. These behaviours harm the consumer himself/herself, other

consumers, as well as the companies, while taking, probably, unlimited variety of forms.

This chapter was aimed at explaining the term of consumer behaviour and the most important issues related to this topic. Consumers should be aware of the treats they may face on the market, as high pressure of globalisation and shopping obsession may deform the perception of what is right and wrong.

Chapter 2

Understanding consumption and consumer values

Chloé Anselmo & Stéphane Ganassali

Introduction

Consumption, commonly defined as being the way goods and products are used by private households, is shaped by many factors, drivers and components. In this chapter, the authors will develop three important points to understand consumption and the behaviour of consumers.

First of all, the analysis of the composition and evolution of household expenditure in the EU-28 will give a better understanding of current consumption practices in Europe and their evolution in the last years. In the second part, the three commonly accepted types of consumer values (functional, affective and symbolic) will be explained to provide a finer insight into consumers' choices and behaviours. Lastly, several types of misdirected or addictive consumption phenomena will be presented, ranging from pure addiction to materialism excess and consumption misbehaviours led by external factors, including the asymmetry of information.

In light of the explanations provided in this chapter, the reader will get an improved knowledge of the whys and wherefores of consumption behaviours.

2.1. Household consumption – statistics and structure

According to the SNA93 – System of National Account 1993, the international standard for compilation of national accounts statistics and for the international reporting of comparable national accounting data – a household is “a small group of persons who share the same living accommodation, who pool some, or all, of their income and wealth and who consume certain types of goods and services collectively, mainly housing and food.” (SNA 4.137 [4.20]). This definition includes: one-person household, nuclear household (or one-family household), extended household, composite household, and other/unknown (OECD).

As of 2016 in the EU-28, the number of households amounted to 219 907 500 (source: Eurostat), with a huge discrepancy between countries. For reference, Germany alone represents 18.43% of European households (40 536 500), while Malta only accounts for 0.07% (151 200). Germany, France, the United Kingdom and Italy alone constitute 56.44% of the total amount of households in EU-28.

Between 2007 and 2016, the EU-28 household expenditure increased by 13.30%, despite a clear decline between 2008 and 2009, mostly due to the economic crisis.

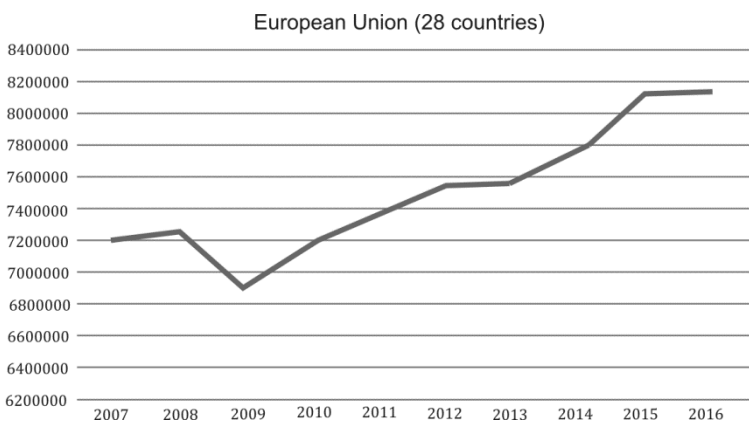


Figure 2.1. Evolution of total household expenditure – EU-28 (Unit: current price)

Source: Eurostat.

However, the growth rate has been more fluctuant, and the mean growth rate amounts to 1.43%. Between 2008 and 2007 already, the growth rate was only 1%, and even descended to – 4.63% between 2008 and 2009. Also notables are the figure for 2012–2013 (0.36%) and, even more recently, 2015–2016 (only 0.23%).

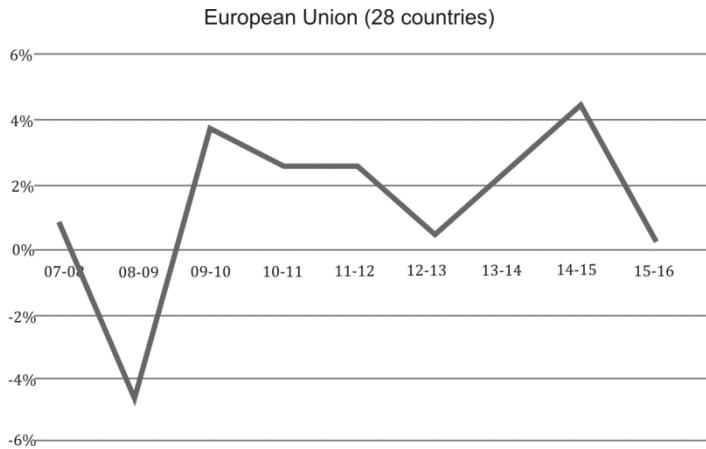


Figure 2.2. Evolution of growth of total household expenditure – EU-28

Source: Eurostat.

The United Nations Statistics Division classified those households' expenditures into 12 categories (COICOP – Classification of Individual Consumption According to Purpose) (Unstats):

1. *Food and non-alcoholic beverages* (01.1. Food – 01.2. Non-alcoholic beverages);
2. *Alcoholic beverages, tobacco and narcotics* (02.1. Alcoholic beverages – 02.2. Tobacco – 02.3. Narcotics);
3. *Clothing and footwear* (03.1. Clothing – 03.2. Footwear);
4. *Housing, water, electricity, gas and other fuels* (04.1. Actual rental for housing – 04.2. Imputed rentals for housing – 04.3. Maintenance and repair of the dwelling – 04.4. Water supply and miscellaneous services relating to the dwelling – 04.5. Electricity, gas and other fuels);

5. *Furnishing, household equipment and routine household maintenance* (05.1. Furniture and furnishings, carpets and other floor covering – 05.2. Household textiles – 05.3. Household appliances – 05.4. Glassware, tableware and household utensils – 05.5. Tools and equipment for routine household maintenance);
6. *Health* (06.1. Medical products, appliances and equipment – 06.2. Outpatient services – 06.3. Hospital services);
7. *Transport* (07.1. Purchase of vehicles – 07.2. Operation of personal transport equipment – 07.3. Transport services);
8. *Communication* (08.1. Postal services – 08.2. Telephone and telefax equipment – 08.3. Telephone and telefax services);
9. *Recreation and culture* (09.1. Audio-visual, photographic and information processing equipment – 09.2. Other major durables for recreation and culture – 09.3. Other recreation items and equipment, gardens and pets – 09.4. Recreational and cultural services – 09.5. Newspapers, books and stationery – 09.6. Package holidays);
10. *Education* (10.1. Pre-primary and primary education – 10.2. Secondary education – 10.3. Post-secondary non-tertiary education – 10.4. Tertiary education – 10.5. Education non-definable by level);
11. *Restaurants and hotels* (11.1. Catering services – 11.2. Accommodation services);
12. *Miscellaneous goods and services* (12.1. Personal care – 12.2. Prostitution – 12.3. Personal effect n.e.c. – 12.4. Social protection – 12.5. Insurance – 12.6. Financial services n.e.c. – 12.7. Other services n.e.c.).

The distribution of those consumption purposes is as follows:

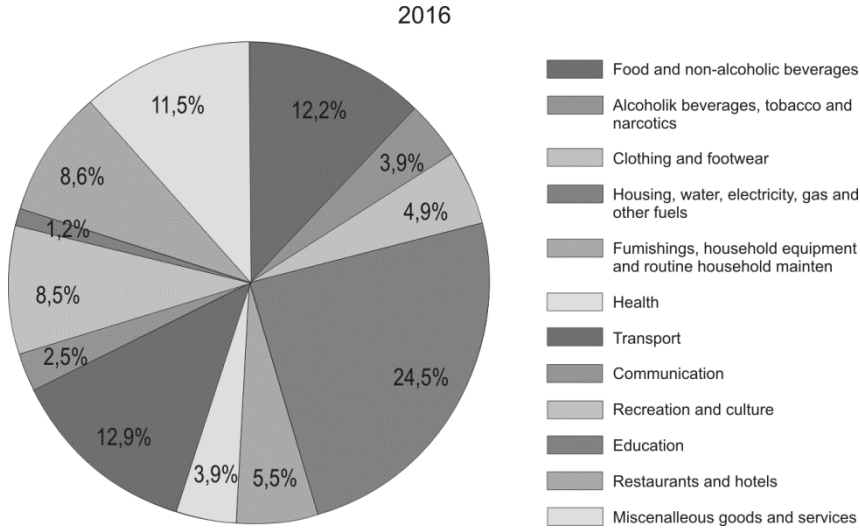


Figure 2.3. Household expenditure by consumption purpose – EU-28

Source: Eurostat.

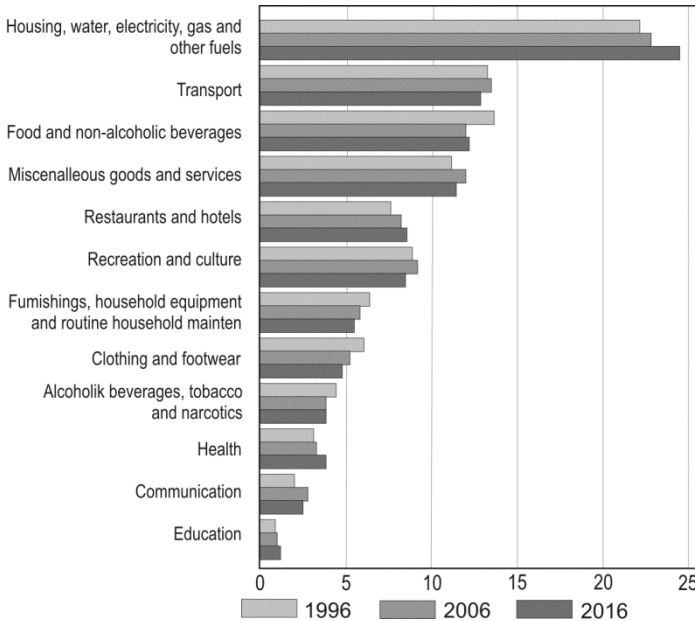


Figure 2.4. Evolution of % of total consumption expenditure – EU 28

Source: Eurostat.

(Note: the values for EU-28 are calculated including confidential figures provided by Croatia and Romania but not publicly disclosed, hence the apparent inconsistency with the available data).

Unsurprisingly, the biggest share of household expenditure is allocated to ‘Housing, water, electricity, gas and other fuels’, followed by ‘Transport’ and ‘Food and non-alcoholic beverages’. Together, the three purposes add up to 49.6% of the total household expenditure. Those three main purpose will however be analyzed more precisely a bit further below, as they also show differences between the EU-28 countries (though they remain, in any cases, the main expenditures).

This graphic shows the evolution of the part of each purpose. As we can see, “Housing, water, electricity, gas and other fuels”, though it has been the main expenditure for the last two decades, has taken an even greater importance. However, the share of “food and non-alcoholic beverages” has decreased.

Table 2.1. Comparison of the three main purposes – EU-28

Country	Housing, water, electricity, gas and other fuels (% of total)	Food and non-alcoholic beverages	Transport	Total
Austria	22,4	9,7	11,9	44,0
Belgium	24,5	13,4	11	48,9
Bulgaria	19,3	19,5	14	52,8
Croatia	n.d.	n.d.	n.d.	n.d.
Cyprus	15,9	14,3	12,1	42,3
Czech Republic	25,6	16	9,8	51,4
Denmark	29,1	11,4	11,8	52,3
Estonia	17,6	20,3	11,3	49,2
Finland	28,4	12	11,9	52,3
France	26,2	13,4	13,1	52,7
Germany	23,9	10,6	14,4	48,9
Greece	20,5	17,2	13,5	51,2
Hungary	19,2	17,7	12,4	49,3
Ireland	23,3	9,1	13,5	45,9

Italy	23,6	14,2	12,2	50,0
Latvia	21,2	18,2	11,7	51,1
Lithuania	15,6	22,2	15,1	52,9
Luxembourg	24,3	9,4	15,4	49,1
Malta	10,3	12,3	11,9	34,5
Netherlands	23,5	11,7	12,5	47,7
Poland	21,2	17,1	12,1	50,4
Portugal	18,8	16,9	12,7	48,4
Romania	n.d.	n.d.	n.d.	n.d.
Slovakia	24,4	17,8	7,5	49,7
Slovenia	19,7	14,8	15,9	50,4
Spain	22,3	12,8	11	46,1
Sweden	26	12,3	12,7	51,0
United Kingdom	27	8,1	13,4	48,5
EU-28	24,5	12,2	12,9	49,6
Euro Zone	23,9	12,7	12,9	49,5

Source: Eurostat.

However, the discrepancy between the 28 EU countries is quite significant for some purposes, especially the three main ones.

As we can see in the associated table, 'Housing, water, electricity, gas and other fuels' represents 29.1% of the household expenditure in Denmark, while only representing 10.3% in Malta. In 20 of the 26 countries analyzed (no data for Croatia and Romania), this purpose's share is lower than average. The difference between the highest and lowest share value is 18.8 points of percentage, i.e. the widest gap of all 12 purposes.

For Denmark, Finland, the United Kingdom, France, Sweden and the Czech Republic, the purpose represents more than a quarter of household expenditure.

The gap is less notable concerning the 'Transport' purpose, with only 8.4 points of percentage of difference (Slovenia: 15.9%, Slovakia: 7.5%).

Again, a majority of the countries (17 in total) are below the EU-28 average. The dispersion is yet far less important compared to other purposes.

In the case of the 'Food and non-alcoholic beverages', the gap between the highest share (Lithuania, 22.2%) and the lowest (United Kingdom, 9.1%) is 13.1 points of percentage.

Outstandingly, for 18 out of the 26 countries analyzed (Lithuania, Estonia, Bulgaria, Latvia, Slovakia, Hungary, Greece, Poland, Portugal, Czech Republic, Cyprus, Italy, Belgium, France, Spain, Malta and Finland), this purpose has a higher share in the total household expenditure than 'Transport'.

The total of the three main purposes also shows disparities between the EU-28 countries. As show on the table, they represent 52.9% of the total household expenditure of Lithuania, while only representing 34.5% of it in Malta, showing a gap of 18.4 points. Interestingly, out of the 26 countries for which the data are shown, half of them are below average (49.6% for all EU-28, 49.5% for the euro-zone only), though Malta's percentage is still far lower than the others (7.8 points of difference with its direct follower, Cyprus).

Overall, consumption in EU-28 has increased over the past decades (+13.30% between 2007 and 2016, no data available before 2007 – as Bulgaria joined the Union in 2007), both in volume and value. It is important to note that the evolution of consumption purposes' shares in total household's expenditure also reflect the economic changes and development of EU-28, as we saw that "food and non-alcoholic beverages" represent less and less of the share of total expenditure, while, on the other hand, "restaurants and hotels" shares are increasing. According to Engel's law (1857), which states that a rising income leads to a decrease of the proportion of income spent on food, as well as to the further theories drawn from the model (notably Houthakker, 1957), those indicators reflect an overall amelioration of life conditions in the studied countries.

The discrepancy between EU-28 countries is however notable: Greece's expenditures have fallen by 18%, while most of the biggest evolutions come from the most recent countries in the Union (which joined the union between 2005–2007), such as Malta (+43%), Slovakia (+42%), Lithuania (+36%), Bulgaria (+33%), Poland (+32%), Czech Republic (+29%) or Estonia (+27%).

2.2. Consumption explanations

Consumption is frequently explained, in literature, by three distinct consumer values: functional, affective and symbolic. According to Park, Jaworski and MacInnis (1986), consumer value defines a product's or brand's capacity to satisfy consumption's needs. It makes it therefore possible to assess "brand consumer value". Those three approaches are not opposed, though they study distinct aspects of consumer behaviour that are, in many cases, distinct but complementary.

A) Functional consumer values

Functional consumer values are the classic view of consumption values, dating back to the end of the 19th century. Those values are mainly utilitarian, i.e. the actual utility that a product bears, regardless of any other consideration. Functions, in general, are the performance characteristics looked for by consumers in a product (for instance, a shampoo might be anti-dandruff, dye friendly, for greasy hair, frizzy hair, thin hair, etc.).

Traditionally, the view of consumer values is mainly turned to features ("characteristics that supplement the product's basic function"), (Kotler, 2016) and benefits. Consumers are supposed to weight the functional features of a product in comparison with other substitute products in order to perform a choice.

According to the classic microeconomics theory, particularly to Lancaster's model (1966) which derives from a broader theory assuming that "goods are the direct objects of utility", consumers are supposed to choose the product with maximal utility. In other words, consumers remain rational as to how they will choose a product rather than another one, judging them on the features, and are aware of all the possibilities they may find on the market to make the most rational choice by weighing the pros and cons of every possibility. Some goods might not be chosen as they are seen as too expensive compared to their actual function, but on the other hand, people from higher class with higher incomes might completely ignore the price feature as they are, by any mean, able to proceed to the purchase. However, Simon (1979) introduced the concept of limited rationality based on the observation that consumer, and more generally economic agent, are in no

way able to collect, stock and process all the information available and to predict all possible situations.

The precisely functional consumer values satisfy what can be called basic needs (what people need to get in order to live properly) first charted by the works of Maslow (1943), who outlined 5 basic needs, separated between deficit needs/basic needs and growth needs:

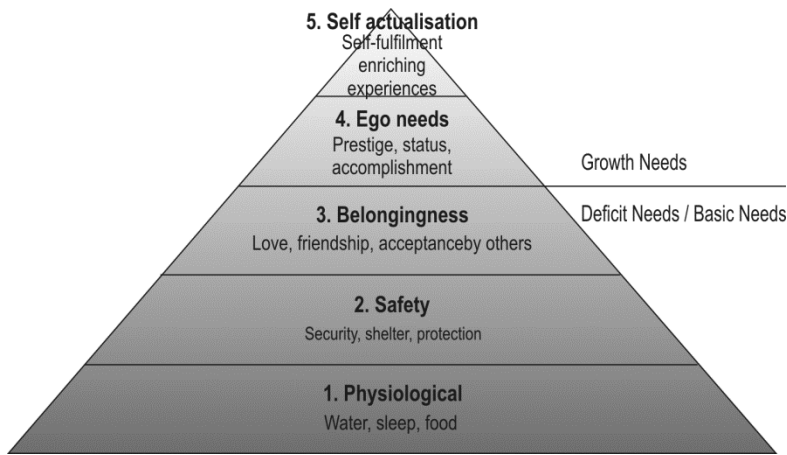


Figure 2.5. Maslow's pyramid of needs

Source: (Maslow, 1970).

According to this theory, needs must be satisfied before progressing up the ladder, in their hierarchical order (physiological needs first, then safety, etc.). If physiological needs are not fulfilled, one may lose the ability to experience and seek for the following levels. However, it is currently widely spread that this hierarchy is not necessarily motionless, as some products or services may serve several levels of the ladder, and some needs that may appear physiological might indeed express other needs (example: the need of a burger might not be purely food hunger-related, but a need of acceptance by others). As explained by Douglas and Isherwood (1979), "we should not seek to separate 'physiological' from 'psychological' needs as all needs are culturally defined".

Between 2005 and 2010, a study was conducted by Tay and Diener (published in 2011) to enlarge Maslow's findings (based on a small per-

centage on people, in the US only) to a worldwide level. It showed that people actually tend to achieve their physiological and safety needs before all, but people can also achieve well-being only through psychosocial needs. Also, nations have an influence on the fulfilment of basic needs, but much less on growth needs.

Max-Neef (1991) came to a table of 9 needs, namely: subsistence, protection, affection, understanding, participation, idleness, creation, identity and freedom. Contrary to Maslow's theory, Max-Neef's does not include a concept of hierarchy between the needs. If some needs can be quite similar to Maslow's (physiological-subsistence, safety-protection, belongingness-affection/identity, self-actualization-idleness/creation), some others are completely absent from the first theory. This is the case, for instance, of freedom, which comes with the needs to have equal rights, to run risks, to differentiate ourselves from others, or understanding, which includes the need to experiment, educate oneself, or generally speaking to learn about everything that can be useful or of a certain interest to a particular person.

This theory does not only expose the needs and what they represent, but also how to satisfy them, in various aspects (being, having, doing, interact). Many satisfiers can serve different needs: "work", for instance, satisfies the subsistence need, the protection need, the participation need, the creation need and the identity need.

Satisfiers themselves are divided into five types: violators or destroyers which are applied to satisfy a need, yet destroy the possibility to satisfy it and have a negative influence on other needs (for instance, arms race is supposed to satisfy the need of protection, but threatens the needs of subsistence, affection and participation), pseudo-satisfiers which generate a false sense of satisfaction (for instance, prostitution is a pseudo-satisfier of the affection need), inhibiting satisfiers which over satisfy a need and restrict the possibility to satisfy others (as an overprotective family satisfies the protection need but might endanger understanding, identity or freedom needs), singular satisfiers which satisfy only one need but are neutral to others, and synergic satisfiers which satisfy a given need but also contribute to the fulfilment of other needs.

However, functional value may differ according to many different characteristics. Holt (1998) states that HCCs (Higher Cultural Capital, the upper quintile of the population) and LCCs (Lower Cultural Capital, the lower quintile of the population) have differing definitions of “functional”. While HCCs see functionality through aesthetic value, based on parsimonious design and utilitarian construction, LCCs see it through a pragmatic approach, valorizing the fact that it may bring a solution to everyday needs.

B) Affective consumer values

Affective consumer values are also defined in the literature as emotional, hedonic or experiential consumer values.

Though consumer behaviour studies have first focused on rationality, they later concentrated on more “irrational” choices. It seems like consumers are more and more looking for a hedonic gratification of consumption, looking for their own identity through experiences, hence looking for a more affective value in the consumption (“affect” being the way a consumer feels about an attitude object). According to Abbott (1955), “what people really desire are not products but satisfying experiences. Experiences are attained through activities”.

Holbrook and Hirschman (1982), who published some pioneer works about affective consumer values, assess that some products may bear an important imagery for the consumer, mainly:

- ✓ historic imagery: reminding them of an event that actually occurred, through different senses (a perfume reminding them of a precise person or location, a sound such as the distinctive vinyl turntable sizzling, etc.)
- ✓ fantasy imagery: producing a multisensory image not drawn directly from an actual memory (Singer, 1966).

For the authors, the main components of an experiential value are the three Fs: fantasies, feelings and fun. Fantasies relate to dreams, imagination and unconscious desire, feelings to emotions (love, anger...), and fun represents a “hedonic pleasure derived from playful activities or aesthetics enjoyment”.

This type of values and consumption is tied to imaginative constructions of reality, precisely, “not on what consumers know to be real, but rather on what they desire reality to be” (Singer, 1966). To this extent, desire (mostly emotional desire) is more important than utilitarian motives in the choice of products (Maslow, 1968).

Also, experiential consumption carries a great affective meaning to consumers. In 1999, Schmidt stated that “in a world in which brands rule, products are no longer bundles of functional characteristics but rather are means to provide and enhance customer experiences”. Pine and Gilmore (1998) theorized the concept of experience economy, stipulating that experiences are not, as formerly stated in economy, part of services. To highlight those differences, the authors specify that “commodities are fungible, goods tangible, services intangible, and experiences *memorable*”. The authors also developed the concept of experience itself, as to differentiate it from mere service, especially through economical distinctions:

Economic offering	Services	Experiences
Economy	Service	Experience
Economic function	Deliver	Stage
Nature of offering	Intangible	Memorable
Key Attribute	Customized	Personal
Method of supply	Delivered on demand	Revealed over a duration
Seller	Provider	Stager
Buyer	Client	Guest
Factors of demand	Benefits	Sensations

Experiential consumption relies on various stages of consumption: anticipation experience, buying experience, utilitarian experience, memories. According to Lofman (1991), experiential consumption depends on factors such as environmental context (i.e. the setting of the experience), and factors inherent to the consumer, which are thought, feeling, activity and evaluation, as well as stimulation of the consumers via sensory modalities or sensations. Hedonic consumption bears greater emotional processing, activity and evaluation than instrumental (utilitarian) consumption, though less cognitive processing.

In the light of experiential consumption, Csikszentmihalyi (1997) developed the concept of flow: a consumer in a state of flow is disconnected from any external reality, and purely immersed into the experience (as it is often the case in video gaming). It also induces that the consumer has skills and that the activity might be difficult, enhancing the satisfaction of the consumer when they manage to perform it. The consumer is active and achieving a flow state in consumption induces interactivity and other factors that bring the consumer into the experience as more than a spectator.

Schmidt (1999), in an attempt to provide a strategic framework for experiential marketing, outlined 5 types of experiences:

- ✓ SENSE: sensory experiences appealing to the five senses of the consumer (taste, sight, touch, smell and sound).
- ✓ FEEL: affective experiences producing emotions and feelings towards the products or the brand.
- ✓ THINK: creative cognitive experiences linked to the intellectual conception of the product of the brand, its values, the ideas it communicates and represents.
- ✓ ACT: physical experiences, behaviours and lifestyles, through unique gestures of consumption or rituals.
- ✓ RELATE: social-identity experiences that result from relating to a reference group or culture, through storytelling for instance.

Affective values might be influenced by brand attachment. Attachment has been defined by Bowlby (1982) as an “emotion-laden target-specific bond” between someone and a particular object. More particularly, brand attachment is “the strength of the cognitive and affective bond connecting the brand with the self” (Park, MacInnis, Priester, 2008). In this extent, consumers consider the brand as an extension of their selves, a way to represent who they are and what their values are (i.e. the values highlighted by the brand becomes their own and displaying the brand allows them to express those values to others around them). However, attachment must not be mistaken with attitude. Brand attitude defines whether the consumer likes or dislikes the brand, in other words, how positive/negative their feelings towards the brand are, but do not explain the affective response of the consumers.

The concept of brand love goes further than brand attachment. It has been modelled by Batra, Ahuvia and Bagozzi (2012) as a construct of:

- ✓ Passion-driven behaviours (strong desires to use the brand, to invest resources into it, and to interact often with it),
- ✓ Self-brand integration (brand's ability to reflect the consumers' actual and desired identities, to connect to life's meaning and important values, intrinsic rewards),
- ✓ Positive emotional connections (attachment to the brand and a spontaneous feeling of rightness about it),
- ✓ Anticipated separation distress (a brand becoming so valuable and trusted that its disappearance might become a threat to the consumer),
- ✓ Long-term relationship with the brand (brand community, loyalty programs, interaction with the brand, etc.).

Consumer are much more involved in the buying process when the product displays affective (and symbolic, see below) values, than when the product is purely functional (buying a toothbrush is far less involving than buying a car or even clothes).

C) Symbolic consumer values

Symbolic values are vastly drawn from Veblen's conspicuous consumption theory (1899), which states that consumption, especially of luxury goods, is a way to show one's affiliation to a higher "class", though it might not always reflect the actual economic class (see also "compensatory shopping" in the next section). In his foundational work "*The theory of the leisure class*", Veblen explains that the emergence of a leisure class, concomitant with the emergence of ownership, also led to the need to put in evidence one's wealth and power in order to seek esteem from their peers. The consumption of luxury goods, or goods in excess compared to the minimum needed, was the prerogative of the masters and the wealthiest. It then became an evidence of a status, a kind of honorific consumption, as opposed to the inability to consume which showed "inferiority and demerit".

A product or brand carries a symbolic value in the way that it transfers its own values to the consumer (prestigious, rebellious, etc.). Consequently,

consumer chose some of their products or services in accordance with the symbol they want to be associated with in terms of personal and social characteristics. It helps the consumers in their quest of social acceptance by others and the expression of their personal values (Herek, 1987).

According to Levy (1959), all products carry a symbolic meaning, which can be salient in the case, for instance, of entertainment products or arts. This meaning conveys information concerning the personal and social characteristics of the consumer and might serve as social adjustment.

The symbolic value of a product may influence the view of the consumer, who may consider it subjectively superior even if its tangible features are clearly inferior. Solomon, Bamossy and Askegaard (1999) reminds us that self-concept is linked to the reflected self, which means that people see themselves as they imagine others see them. This image is therefore shaped by clothing, jewelry, and everything that gives them a precise image towards other: consumers tend to try to influence this image through the consumption of certain brand or types of product. According to the symbolic self-completion theory (Gollwitzer & Wicklund, 1982), people who have an incomplete self-definition will seek to complete it by acquiring and displaying symbols related to the identity they wish to construct.

Desmond (2003) reports that symbolic value is sometimes more important than the experience itself, using the example of video recordings during holidays, people give more value to the video recording they will make of an experience, as a mean to show their friends and family what an enjoyable time they had, rather than enjoying the experience at the moment they are living it. Hence, this phenomenon shows how symbolic consumption may be for consumers, as they will use it to define themselves towards others. The author insists on the fact that people do not only value the fake and confuse it with the real, but they actually prefer the fake.

This is largely linked to social value, in other words, how to shape what the others think or see of us through consumption. Holbrook (2006) explains that consumption might serve a status-enhancing favourable impression (giving the example of wearing obviously pricey attire to a job interview) or esteem-evoking material possessions (a luxury car ostensibly displayed in an alley), which is connected to conspicuous consumption.

2.3. Excessive and misdirected consumption

As it has been studied already and explained in the previous parts of this chapter, consumers are not always rational beings. Therefore, many types of behaviour emerged during the last years that may be excessive, misdirected, and rather dangerous. Though addictive behaviours are not quite recent, especially when the products are themselves addictive, some new phenomena have emerged in the last few years. Reith (2004) partly explains the emergence of addiction via the intense valuation of freedom, in other words, the consumer sovereignty “is the fertile soil out of which the shoots of ever more ‘addictions’ grow”. Elliott (1994) adds that consumers might do not only buy for motives directly related to the actual possession of the goods and tend to repeat their behaviour even though it might lead them to severe financial and social consequences.

Nonetheless, all these phenomena have features in common, especially a certain loss of control from the consumers, and the possibility to be linked to Marx’s commodity fetishism theory (1867): relationships with and between things become more important than relationships with and between other human beings.

Excessive and misdirected behaviours are plentiful: they go from addictions, the gravest forms, to a general materialism of individuals, pathologies, or misleading due to a lack of information and acts against consumption.

A) Addictions

It is common knowledge that some products might cause addictions for some consumers. The main addictions in today’s society are, unsurprisingly, alcohol, tobacco, drugs, and games (especially gambling). Addictions are, in short, described as a repeated urge to engage in behaviour known to be counterproductive. Addictive people are often seen as having failed to control themselves, to manage their freedom and regulate their behaviours, as they fell into the “trap”, the risk of addiction that they knew existed and yet did not avoid (Reith, 2004).

Most of those addictions are well-known, and a great literature has already been produced about them, we will therefore treat them in one part, divided between substance addictions and behavioural addictions.

In other words, addiction to a specific component of a consumable product, may it be legal (alcohol, tobacco – nicotine, medicines) or illegal (all types of illegal drugs).

In her work, Reith (2004) stated that the figure of the addict was originally constructed around the interaction properties of some substances (nicotine, alcohol, other addictive substances found in drugs) and the consumption pattern of some groups. Those addictions were therefore explained by physiological reasons that were supposedly more important than social reasons and linked to a deviant identity.

Most of those addictions have been found to be treatable through accurate medical assistance, from replacement of the deleterious substance to a complete withdrawal.

If some substances can cause addictions, some types of behaviour might bear the same effects. Behavioural addictions regroup addictions such as gambling, eating, etc. They are mostly caused by a psychological phenomenon. Some might represent a financial risk for the addict (gambling), or even a health risk (anorexia, bulimia). Still, any behavioural addiction bears a social risk, from exclusion to self-marginalization.

Some of those addictions, as for most eating troubles, are now recognized as actual diseases linked to psychological issues, rather than a mere lack of self-control.

With the development and democratization of modern technologies, some new addictions have appeared. The most representative ones are Internet, video games and, in an even more recent extent, smartphones and social networks. Most of them are still seen as addictions with no medical backgrounds, and therefore inherent to the addicted person who should be able to counter it by mere self-control.

However, much like for alcohol and drugs, detoxification centers for those addictions are starting to appear, sometimes to some extreme degrees (see for instance, military digital-detox camps in China which offers a brutal withdrawal along with an 8-month military training for young people considered as addicted to the Internet).

One of the most recent and popular behavioural addictions is the “binge” phenomenon. In short, binge phenomena can be defined as “doing something quickly, excessively, regardless of the outcome”. It has first been associated with “binge drinking”, i.e. drinking the most in the less amount of time to get excessively drunk as quickly as possible.

This behaviour is not always linked to alcoholism itself, as it is not always a regular behaviour and is mostly performed at parties, or during social events (especially between young people, at student parties, etc.). Students might sometimes justify this behaviour by the “need” to get drunk at home or at a cheap place before moving to a more expensive place, as they consider those places as unenjoyable without being drunk and drinking there as too expensive for their low budgets. Sometimes, this practice is also a rite of passage; a kind of hazing new students must go through to be accepted into the student community.

More recently, with the spread of online platforms permitting an access to a vast supply of series and movies, the concept of “binge watching” also emerged, which can be described as simply watching hours and hours of the same TV series in a row, sometimes resulting into sleepless night (often influencing one’s efficiency in their professional or student life), or lack of social interaction (paradoxically, the growing number of TV series also leads to the creation of new communities, may they be online or in real life).

B) Materialism

Apart from actual addictions, society is nowadays shaped by a rather excessive consumption scheme that can be linked to several factors, the first of them being materialism. The common definition of a materialist person is based on their tendency to acquire a lot of goods and conspicuously use them (Ladwein, 2017), and to place material possession as a high value as well as seeing them as indicators of success and source of happiness (Pilch and Górnik-Durose, 2016). However, even though it might carry a negative meaning to some, materialism, as well as selfishness in a certain extent, is not considered as a moral issue anymore but rather as a goal in people’s life in the current economic landscape.

According to Belk (1983), materialism comes from the possibility to consider goods and products as our own and to showcase this ownership

to others. The author also defined a three-dimensional explanation for materialism:

- ✓ Possessiveness, or “the inclination and tendency to retain control or ownership of one’s possession” (Belk, 1983). It includes that those goods can be lost, by their own means or by the means of others. Also, people showing possessiveness are more likely to prefer buying rather than renting or lending, and to keep their possessions rather than throwing them away or giving them up. Those persons also tend to try to make experiences “real” by photographing them or buying souvenirs to show them later.
- ✓ Non-generosity, or “an unwillingness to give possessions to or share possessions with others”. It differs from possessiveness, as you may for instance be possessive of your children and yet be generous to them. It can be linked with low self-esteem and be a source of unhappiness.
- ✓ Envy, defined as an attitude involving “displeasure and ill-will at the superiority of (another person) in happiness, success, reputation, or the possessions of anything desirable” (Schoeck, 1966). It is not to be confused with jealousy (as jealousy applies to one’s own possession while envy applies to others’ possessions).

To those dimensions Richins and Dawson (1992) added three values that constitute a scale of measurement for materialism, namely:

- ✓ Acquisition-centrality defines the fact that materialist people would see acquisition and possessions as the center of their lives. It gives a meaning to their lives and structures their endeavours. According to Csikszentmihalyi and Rochberg-Halton (1981), for some people; “consumption for the sake of consumption becomes a fever that consumes all the potential energy it can get access to”.
- ✓ Acquisition as the pursuit of happiness or the fact that possessions and their acquisition are the main way to achieve satisfaction and well-being. Happiness can therefore only be achieved through possession.
- ✓ Possession-defined success or the fact that people judge success (be it their own or others’) by their possessions and their quality. This can be related to envy.

Pilch and Górnik-Durose (2016) also studied the links between materialism to the “Dark Triad” traits theorized by Paulhus and Williams (2002): narcissism (inclination to grandiosity, entitlement, dominance and superiority), Machiavellianism (behaving in a cold and manipulative fashion) and psychopathy (high impulsivity, thrill-seeking, low empathy and anxiety). They found out that higher narcissism and Machiavellianism were significantly correlated to a materialistic orientation. More precisely, their studies showed that the Dark Triad traits accounted for 36% of the variance in materialism.

Compulsive shopping or oniomania (sometimes vulgarly referred to as “shopaholism”) defines the repetition of excessive purchases that often ends up causing trouble on a personal, familial and social level, and might be seen as an extreme case of materialism. This concept is, however, not quite new, and was first described at the beginning of the 20th century by Kraepelin and Bleuler. In other words, consumers become obsessed with buying things, even the least useful ones, in a repetitive, irresistible and uncontrollable manner. Some authors, namely Scherhorn (1990) discuss the term of “compulsive”, as it refers to a pressure to do something against one’s own will, and the behaviour studied here relates more to an addiction in the way that it turns an overall normal behaviour into a pathological habit. This is also what emerges from psychiatric literature, which points out that there is usually no external control leading to this behaviour.

In a study lead for the Iowa State University, Martinez-Novoa and Hodges (2016) reveal three central thematic of compulsive shopping:

- ✓ Promoting consumption: the perception of society’s views on consumption (one must buy to help the economy, and the shopping venue is a place of happiness and helps forgetting problems).
- ✓ Popular misconceptions: society does not seem to recognize this compulsive behaviour as a serious matter and a real problem, which allows people to think that it is accepted and does not represent a serious matter.
- ✓ Potential consequences: most of the time, this behavioural trouble is not recognized as such and therefore not treated.

Often linked, or even confused with, compulsive shopping, compensatory shopping is widely speaking motivated by the satisfaction of various

types of needs (see Max-Neef). It is often defined as a way to compensate “powerlessness”, in other words, to counterbalance the lack of power, power being defined as “the asymmetric perceived control over resources or people”. This counterbalancing is done via the act of buying products and services to demonstrate, for instance a higher status to others (Chen, Lee, Yap, 2011), or buying something to give a meaning to one’s life or compensate for the lack of another thing. This can be linked to conspicuous consumption, explained in section 2.3 (Symbolic consumer values).

Consequently, consumers may buy goods and services that are far beyond their means, sometimes resorting to consumer credits, which may result in debts or bankruptcy, to achieve (or fake) their desired status, or might excessively buy a certain type of goods to compensate for either the lack of another one or the lack of satisfaction of a need (especially affection need). Grunert (1993) phrased compensation as follows: “In general terms, the phenomenon is that a lack of x could be cured by a supply of x, but may also be cured by a supply of y. If y is used, this process is called compensation”.

Woodruffe (1997) explored the role of compensatory consumption more precisely in women’s life, as women seem to be more prone to show this type of behaviour. Respondents of her study said that their behaviour was linked to lacks or deficits in their lives: depression, feeling down, marital problems (therefore a lack of affection need satisfiers), and lack of excitement or low-esteem (therefore a lack of identity need satisfiers).

C) Consumers’ pathologies

Also, consumers may sometimes behave in an abnormal way in the physical act of buying. We thus speak of pathology which is, by its definition, a social behaviour that goes against social norms and values. In the more confined field of consumer behaviour, those pathologies (often referred to as consumer misbehaviour or abnormal consumer behaviour (Fullerton & Punja, 1993) can be expressed in multiple ways. Those behaviours are disrespecting rules and norms and are most often seen as intolerable by companies and other customers. They usually consist in vandalism (i.e. damaging properties that are not theirs), bullying consumers and personnel, or theft.

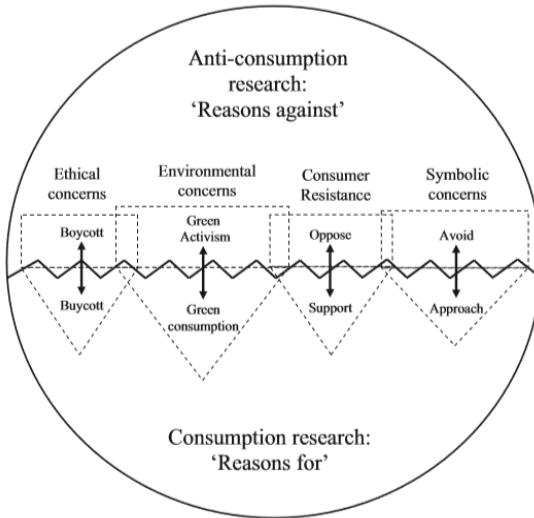


Figure 2.6. The focus of anti-consumption research from a reasons theory perspective

Source: Chatzidakis & Lee, 2012.

Lovelock (2011) developed the concept of bold customer, or a customer acting in an improper manner which can result in troubles for all stakeholders (companies, personnel and other customers). Those consumers can behave in many different ways that are interfering negatively with others: by being drunk, by verbally and/or physically abusing staff or other customers, by infringing policies (cutting in line for instance), or being uncooperative (rude, or demanding things that cannot be delivered to them) (Hoffman & Bateson, 2010). This results in the impossibility to achieve a maximal customer's satisfaction.

D) Anti-consumption

Access to more and more goods, the preponderant role of consumption in any aspect of life, and the advent of mass consumption led to some forms of defiance. Anti-consumption is, in its narrowest definition, a set of "phenomena that are against the acquisition, use, and dispossession of certain goods" (Lee et al., 2011), and includes a sense of intentional choice of not consuming a certain brand, product, service, etc. The phenomenon is

harder to quantify than consumption itself, as there are no precise figures about it (unlike sales, for instance).

Anti-consumption is often expressed through boycotting lead by reasons against: specific brands (Starbucks for instance), which might benefit other brands on the same market; behavioural and product categories (alcohol, tobacco, etc.); consumer culture (through voluntary simplicity for instance – rejection of high-consumption, materialistic lifestyles, etc.)

Reasons for, which are not always the logical contrary of reasons against (e.g. reason against meat consumption is often an opposition to animal cruelty, while reasons for meat consumption is not a desire to make animals suffer), can also lead to anti-consumption.

The study of anti-consumption is highly complicated by its strong ties and intertwinement with other concepts, such as nonconsumption (which can affect a brand since the consumer might prefer another brand) or alternative consumption (in which a product is not consumed because the consumer considers another one as a better option according to their values). Still, research shows that data might often be misinterpreted as anti-consumption while other explanations might be more suitable. Thus, anti-consumption is a reality.

E) Asymmetry of information

Aside from the previously presented factors inherent to consumers, some apparently irrational types of behaviour can be caused by external elements, and especially to asymmetry of information. Schmidt (1999) predicted that “through advancements in information technology, information about brands – in all different forms and media – will be available instantly and globally”. However, if more information is currently available and easier to access compared to a few decades ago, companies tend to retain some of them, mostly to protect their brand image or to avoid opposition with consumers’ value.

Consumers are consequently not always able to decide rationally enough of their consuming behaviour and might even go as far as not buying the product/service (as some information they think are valuable are not available) or assuming that the product/service is either good (no mention

of harmful component for instance) or bad (if the information is incomplete, it must have something to hide). According to Clarkson, Jacobsen and Batcheller (2007), those asymmetries can lead to unfair agreement and thus to unrealized opportunities for third parties.

The authors also state that asymmetry of information comes from inadequate information sharing and might have negative consequences for both sides (the side with no, or not enough, information, and the side with all the information). They also divide it between horizontal (when the information is scattered among similarly-situated entities) and vertical (when one type of entity holds information while another does not). In the case of consumption, the information asymmetry is mostly vertical, as the producers or sellers may hold more information than consumers.

Many researches have been conducted mainly on the agricultural field, precisely about GMOs. It has been widely shown that not only consumers are victims of asymmetry, but also sellers themselves, as they are not always told everything from the manufacturer/provider and therefore cannot give proper information to their own consumers (a situation then called incomplete information). This lack of information can lead to a negative reaction from consumers, especially in the food and drinks sectors: a misunderstanding of the methods of production or the used science causes concern and weak consumer confidence (Hobbs & Plunkett, 1999). Governments are attempting to counter the asymmetry in those sectors, notably by forcing and ensuring proper and clear labelling so that consumers can, in their right minds, chose the content of their food.

Salaün and Flores (2001) studied the information needs of consumer in the food sector, also highlighting the principle of over-information: in some cases, a lot of information is given to the consumer through advertising, labelling, labels, etc., but they might not be clear to the reader (unknown symbols, terms, etc.). As a result, consumers would spend too much time trying to decipher all the information and this could result in boredom, impatience, or the loss of confidence in the product.

Asymmetry of information is therefore not only caused by a *total* lack of information, which is often resolved at least partly by governmental policies, but more and more by the lack of *relevant* information. Consumers do not

always understand the given information as they might be presented in a blurry manner to them (scientific jargon, relevant information drawn in secondary information, etc.). To answer this lack of understanding, brands and government are experimenting clearer display of information, through the use of simpler symbols (colours, letters, levels) on food, cars or household appliances for instance.

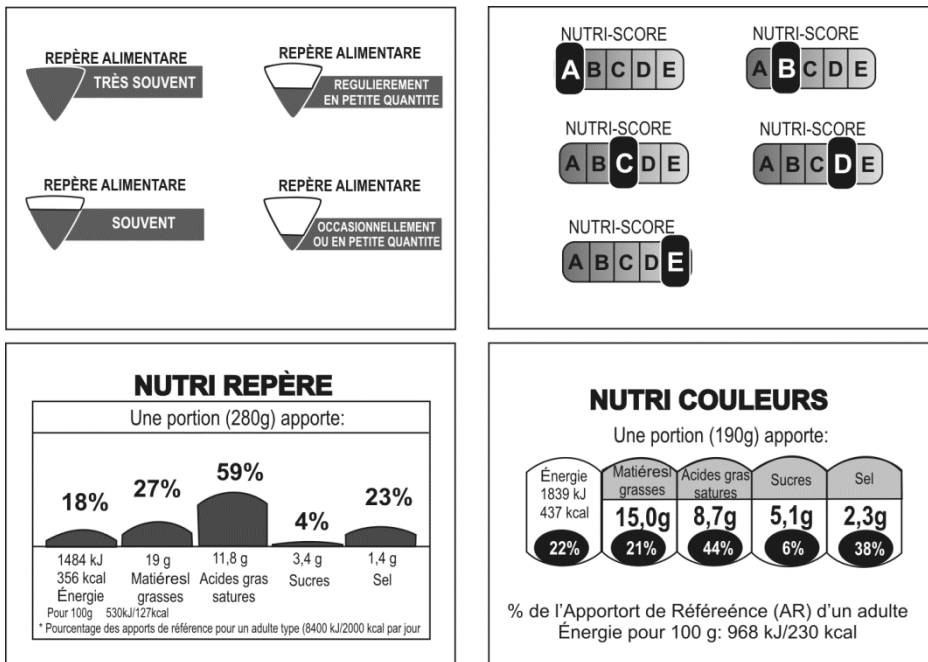


Figure 2.7. Proposition of labelling of nutritional information from the French government

Source: <http://www.quechoisir.org>.

Conclusion

Consumption is a key activity in our modern-days societies. Almost everyone, in a sense or another, has a materialistic side. As Ladwein (2017) states, consuming allows the individuals to “draw the outline of their lives, to shape it according to their own scheme”.

If functionality used to be the main reason for consumers' choice, affective and symbolic values are playing a growing role in modern consumption. We do not exclusively acquire utility, we imagine, experience, assess ourselves and our values, and build our desired persona through consumption.

The emergence of the society of consumption concomitantly allowed the development of excessive and misdirected behaviours, ranging from health-endangering addictions to dissident attitudes. Those behaviours are relatively dangerous to different extents to the consumers and are not always only imputable to substances (nicotine, etc.) or to external-only factors: consumers themselves, in their lack of rationality, can imperil themselves on a physical, psychological, social or even financial level.

More than purely answering the problem of how to protect consumers, it is essential to question the spread, or more specifically the lack of spread, of information, as it would grant more knowledge and thus rationality to consumers. Besides, consumer education is fundamental. The omnipresence of consumption has become such a great concern in societies that it arises critical and activist trends focused against it, such as boycott or new lifestyles.

Customer awareness importance

Marta Grybś-Kabocik & Agnieszka Tetla

Introduction

When the World became flat thanks to globalization, the consumers became a part of processes which in many cases they do not understand, neither are aware of. Economic and technological development boosted the excessive consumption and placed the consumers somewhere in the middle between egoistic satisfying of their needs and the natural environment protection.

Especially in these difficult times of crucial global changes, consumers must be aware of their rights and turn them consciously into the duties towards the future generations. In this chapter the conceptual clarification of rights, awareness and protection will be performed and the role of consumer rights awareness and protection will be explained.

3.1. Conceptual clarification – rights, awareness, protection

At the basis of consumer awareness, protection and standards, stay the consumer rights. In 1962, then US President John F Kennedy declared four basic consumer rights – the right to safety; the right to be informed; the right to choose and the right to be heard. This declaration encouraged a global debate over consumer rights and a development of consumer groups reflecting the comprehensive needs of consumers in the marketplace. The guidelines were formulated in order to (Fair trading, 2018):

- ✓ assist countries to achieve and maintain adequate protection for consumers,
- ✓ encourage ethical conduct in the marketplace,
- ✓ encourage the development of market conditions which provide consumers with greater choice at lower prices.

Two decades later, in the 1980s, four more rights were added by the international coalition of consumer groups: the right to satisfaction of basic needs; the right to redress; the right to consumer education; the right to a healthy environment (Consumers Association of South Australia Inc., 2018).

The right to satisfaction of basic needs – to have access to basic, essential goods and services: adequate food, clothing, shelter, healthcare, education and sanitation (Consumers Association of South Australia Inc., 2018).

The right to a healthy environment – to live and work in an environment which is non-threatening to the well-being of the present and future generations (Consumers Association of South Australia Inc., 2018). The right to a clean environment is becoming increasingly significant, as people should be assured a safe and free from pollution environment, moreover, they should be able to choose products environmentally safe (Larsen & Lawson, 2013: 105–106).

The right to safety – to be protected against products, production processes and services that are hazardous to health or life (Consumers Association of South Australia Inc., 2018). Consumer safety refers to protection guarding product and service malfunctions that may occur in everyday use, as well as to a product design that can anticipate and guard in case of misuse (Larsen & Lawson, 2013: 105–106).

The right to be heard – to have consumer interests represented in the making and execution of government policy, and in the development of products and services (Consumers Association of South Australia Inc.). Consumers' voice should be taken into account in the marketplace. This means that the governments and businesses should search for, enable and respond to consumer input in the development of policy and practices (Larsen & Lawson, 2013: 105–106).

The right to redress – to receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services generations (Consumers Association of South Australia Inc., 2018).

The right to be informed – to be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labelling generations (Consumers Association of South Australia Inc.). Many economists and people in legislative, regulative and judicial circles state that consumers miss the adequate information on which they could base their purchase decisions. The right to be informed is the right to be protected against fraudulent, deceitful or grossly misleading information, advertising, labelling or other practices, and to be given the facts needed to make an informed choice (Larsen & Lawson, 2013: 105–106).

The right to consumer education – to acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them (Consumers Association of South Australia Inc.).

The right to choose – to be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality (Consumers Association of South Australia Inc.). Free choice is in the centre of modern economy. Consumers take choice among various alternatives to satisfy their needs in the most effective way. Making a choice involves thus the judgement, which distinguishes choice from “picking” and a deliberate action deriving from an awareness of a need or preference. The right to choose is closely connected with the right to information, as to choose, consumers must know the possible solutions (Larsen & Lawson, 2013: 105–106).

After the consumer rights have been explained, the notion of consumer awareness should be described. Consumer awareness refers to the combination of the following (Sharma, 2013: 84):

- ✓ The knowledge of the product quality – the consumers should know the impact of the product on health, whether the product is free of creating any environmental hazard or not, whether the product can negatively influence the wellbeing of other people etc.

- ✓ The education about the various types of hazards and problems associated with marketing of a product – consumers must select the reliable information about the product, be resistant towards harmful advertising, be able to make conscious decisions by themselves, etc.
- ✓ The knowledge about 'Consumer Rights' – the consumers must know that they have the right to get the right kind of product. Additionally, if the product is found out to be faulty somehow, the consumers should have knowledge of claiming compensation as per the law of the land.
- ✓ The knowledge about consumer's own responsibilities – the consumers should not engage in wasteful and unnecessary consumption.

The consumer's vulnerability condition and lack of resources result in the need of consumer protection. Vulnerability can be understood according to three dimensions (Silva & Lenhardt, 2011):

- ✓ technical (ignorance of product/service aspects),
- ✓ factual (consumer incapacity to contest the vendor),
- ✓ legal (lack of legal, accounting and economic expertise),

while the lack of resources can be of an economic attribute (financial difficulties) or of a procedural nature (difficulty to produce evidence).

In 2016, the United Nations have underlined the importance of consumer protection and launched the consumer protection guidelines. Member States should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines and relevant international agreements. Each Member State is obliged therefore to set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures (United Nations, 2016: 7–8).

Table 3.1. The outline of the United Nations consumer protection guidelines

A. National policies for consumer protection	<p>Member States should establish consumer protection policies that encourage:</p> <ul style="list-style-type: none"> • good business practices, • clear and timely information to enable consumers to contact businesses easily, and to enable regulatory and law enforcement authorities to identify and locate them, • clear and timely information regarding the goods or services offered by businesses and the terms and conditions of the relevant transaction, • clear, concise and easy to understand contract terms that are not unfair, • a transparent process for the confirmation, cancellation, return and refund transactions, • secure payment mechanisms, • fair, affordable and speedy actions despite resolution and redress, • consumer privacy and data security, • consumer and business education.
B. Physical safety	<p>Member States should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.</p>
C. Promotion and protection of the economic interests of consumers	<p>Member States should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the marketplace.</p>
D. Standards for the safety and quality of consumer goods and services	<p>Member States should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity. National standards and regula-</p>

	<p>tions for product safety and quality should be reviewed from time to time in order to ensure that they conform, where possible, to generally accepted international standards.</p>
E. Distribution facilities for essential consumer goods and services	<p>Member States should, where appropriate, consider:</p> <p>(a) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas.</p> <p>(b) Encouraging the establishment of consumer cooperatives and related trading activities, as well as providing information about them, especially in rural areas.</p>
F. Dispute resolution and redress	<p>Member States should encourage the development of fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases. Member States should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, transparent, inexpensive and accessible. Such procedures should take particular account of the needs of vulnerable and disadvantaged consumers. Member States should provide consumers with access to remedies that do not impose a cost, delay or undue burden on the economic value at stake and at the same time do not impose excessive or undue burdens on society and businesses.</p>
G. Education and information programmes	<p>Member States 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</p>

	<p>should be given to the needs of vulnerable and 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.</p>
H. Promotion of sustainable consumption	<p>Member States should promote the development and implementation of policies for sustainable consumption and the integration of those policies with other public policies. Policymaking by Member States should be conducted in consultation with business, consumer and environmental organizations and other concerned groups. Business has a responsibility for promoting sustainable consumption through the design, production and distribution of goods and services. Consumer and environmental organizations have a responsibility for promoting public participation and debate on sustainable consumption, for informing consumers and for working with Member States and businesses towards sustainable consumption.</p>
I. Electronic commerce	<p>Member States should work towards enhancing consumer confidence in electronic commerce by the continued development of transparent and effective consumer protection policies, ensuring a level of protection that is not less than that afforded in other forms of commerce.</p>
J. Financial services	<p>Member States should establish or encourage, as appropriate:</p> <ul style="list-style-type: none"> (a) Financial consumer protection regulatory and enforcement policies, (b) Oversight bodies with the necessary authority and resources to carry out their mission , (c) Appropriate controls and insurance mechanisms to protect consumer assets, including deposits, (d) Improved financial education strategies that promote financial literacy, (e) Fair treatment and proper disclosure, ensuring that financial institutions are also responsible and accountable for the actions of their authorized agents. Financial services providers should have a written policy on conflict of interest to help detect potential conflicts of interest. (f) Responsible business conduct by financial services

	<p>providers and authorized agents, including responsible lending and the sale of products that are suitable to the consumer's needs and means,</p> <p>g) Appropriate controls to protect consumer financial data, including fraud and abuse,</p> <p>h) a regulatory framework that promotes cost efficiency and transparency for remittances, such that consumers are provided with clear information on the price and delivery of the funds to be transferred, exchange rates, all fees and any other costs associated with the money transfers offered, as well as remedies if transfers fail.</p>
K. Measures relating to specific areas	In advancing consumer interests, particularly in developing countries, Member States should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water, pharmaceuticals, energy and public utilities, and also address the specificities of tourism.

Source: Own contribution on the basis of: United Nations, 2016: 10–22.

3.2. Consumer awareness need

In era of unlimited variety of products and services, the consumers must be especially aware of their rights. It is difficult to find out who is a genuine producer or seller, moreover it is practically not possible for consumers to personally come in contact with a producer or seller. Moreover, thanks to technological development, consumers often order needed products online, what makes the distance even further (Sharma, 2013: 84–85).

Consumers are becoming increasingly concerned about the degree to which retailers, manufacturers, marketers and Web sites are monitoring their every action. The increased use of scanner data has allowed for more and more marketing and promotional efforts based on databases of consumer purchase information (Graeff & Harmon, 2002: 302–304). Consumers must be aware of their right to privacy, they should know which information to publish online, which can be used by external organization in a negative way, and how to protect their personal data.

It has become very difficult to tell which product is genuine. Consumers believe that all information provided in advertisements is reliable, however it is not true in every case. Much information is deliberately hidden in certain advertisements to mislead the consumers (Sharma, 2013: 84–85). A misleading advertisement can be observed in Africa, in case of skin bleaching creams. The celebrities are promoting the bleaching creams, even if they are not aware of carcinogenic substances which are not revealed on labels.

Another major issue is that the consumers are not united. Producers have become stronger and organized because there are various organisations to protect their interest. The consumers are still weak and unorganized, and as a result, often duped and deceived (Sharma, 2013: 84–85).

Because of the above arguments it is very important for consumers to protect themselves from the unfair trade practices of the traders and service providers. They need to be aware of their rights as consumers and use them properly. It should be noted that consumer awareness is not just only about consumers' rights but also about consumer obligations towards sustainable consumption (Sharma, 2013: 84–85).

3.3. Consumer movements

Educational campaigns, Internet revolution and free flow of goods, people, capital and information resulted in consumers becoming more aware of their rights, but also are more educated about ethical, ecological or healthier consumption. The information about consumer rights and ways to protect them was never as easy to find as it is now. As a result, consumers became more empowered while being in relations with other parties on the market (Harrison, 2003: 127). Consumer movements might be understood as organized collective consumer actions e.g. consumer movements might be organized in pursuit of equality in relationship between both selling and buying entities (Mayer, 2007) In specialized literature, such terms as “consumer movement” and “consumerism: are very often used as substitutes (Foxall, 1978). Such situation might lead to misunderstandings, as in some other specialized texts “consumerism” is understood as excessive interest

in buying goods and leading consumption lifestyle. For the sake of terminology accuracy,, consumer movements are social movements which aim at transforming consumption or marketing related order of environment. (Larsen & Lawson, 2019: 98) It is a collective consumer action which has the power to change the marketplace. Other definition underlined that it is a persistent effort of organized group of consumers who transfer elements of consumer culture. (Weijo, Martin, Arnould, 2018: 251–274) While analyzing the history, consumer movements were mostly researched in connection to the USA market. However, it does not regard this market solely. Nowadays, many consumer movements are international due to the technological development. Consumer movements are very often expressed in boycotting, protests or alternative lifestyles, which can spread almost without any barriers across countries.

The major boost for consumer movements was the development of consumer rights. The roots for contemporary understanding of consumer movements was the development of Consumer Association of Canada after World War II. Since that moment, the dramatic increase in amount of consumer organizations across countries could be observed. Therefore, the awareness among consumers grew rapidly. Firstly, consumer movements scope considered mainly goods and services purchasing transactions, however together with its developments it goes further beyond that including for example quality of production, impact of companies and marketing on values, social and environmental cost of production or consumption etc. Contemporary consumer movements differ from those few years ago. The causes of these movements are far more complex, than from previous consumer movements in terms of scope. Therefore nowadays consumer movements are more intense and widespread.

The success of social movements such as consumer activism appears where the goals are achieved. In the case of consumer movements it means that consumers are protected against a variety of marketplace misbehavior like threats against health, well-being, sustainability, equality, justice. On the one hand, consumer rights development triggers consumer movements to develop as well. On the other hand, consumer rights throughout years have been developed due to the issues raised by individuals and consumer groups (Larsen & Lawson, 2019: 108–109).

Conclusions

Nowadays, there is a strong foundation for consumers to be protected and safe on the market. There are a lot of organizations that educate consumers, but also fight for their rights protection. What is more, consumers easily organize themselves and act in order to ensure that the marketplace is not overused by any party and the environment is consumer-friendly. Despite that, consumer rights are still very often violated. The reason of that is low consumer awareness of their rights and the fact that they shall be protected. This need seems more important than ever, as the market space conditions become more and more complex year in year out.

PART II

COMPANIES' BEHAVIOUR AND CONSUMER AWARENESS RELEVANCE

Chapter 4

Understanding the market and companies' behavior

Magdalena Iordache-Platis

Introduction

Economic life is a dynamic reflection of the interactions between multiple internal and external factors. Individuals, companies and societies face continuous increasingly influences of globalization and digitalization, for better or for worse. Contemporary economy is full of lessons learned from past actions and decisions. Therefore, decisions change, strategies differentiate, behaviors become more affected by external determinants than internal ones.

In a context in which technologies based on information and communication evolve extremely fast, differentiation as a main strategy for success becomes more difficult to be marketed. On the one hand, there is the pressure of the competition on each company to identify its competitive advantage and to invest in what makes its product not only different, but better than the others. On the other hand, the pressure on companies is received from their clients who become more and more informed of products and services differentiations, of marketing mix characteristics. Therefore, building a good relationship with their clients is a permanent long term interest. The higher the temptation to attract clients is getting, the more important the way of achieving this goal. In addition, an ethical or unethical behavior is not a matter of direct declaration of a company's management, instead it is more about the consumer's perception, as well as of other stakeholders. At the same time, more profit is no longer possible to be achieved when consumers be-

come more aware of the companies' policies and behaviors, at least not for a long term; the same with the client satisfaction maximization: it cannot be achieved in the context of unethical behaviors.

Nowadays, marketing functions become more important than ever. Understanding the consumer needs is important not only in terms of what they really need and want to buy, but in terms of how much they are willing to accept or give up when the product is not perfect. Connecting the company with the market refers to the adapting process to the consumer needs, without ignoring how this connection is made from an ethical point of view. Both maximizing profit and clients' satisfaction are marketing functions which companies strive to achieve. The behavior the companies adopt creates a specific connection between the two objectives: profit and client's satisfaction.

4.1. Market, marketplace and companies

Market is an economic place where supply and demand meet. It is the place where potential buyers meet suppliers and where competition appears. It is a place where prices are determined and equilibrium changes into non-equilibrium and vice-versa. Samuelson (1949) explained the classical market understanding in relationship with the market mechanisms and requirements for maximizations; he states that price system can be efficient and focuses on comparative advantages showing that this approach is generated from the so called welfare economics. It is the approach of permanent but dynamic correlations between supply and demand curves.

From a marketing perspective, market is both largely and narrowly considered. On the one hand, market is generally expressed as a larger environment characterized by different components, while on the other hand, market is defined by companies' behaviors on particular industries and products. Kotler (2008) explains that companies may define a market-oriented mission, meaning a statement in which they declare what they want to obtain in a larger environment; the author provides examples of cases in which market oriented is clarified by customer needs starting from the product understanding. The focus is on several characteristics of the

mission: realistic, specific, based on distinctive competences and motivating. Such an approach reveals the importance of understanding the market through the organizational capacity of dealing with market opportunities and threats.

Munsey (2012) as editor describes the contemporary economy as a place where zero risk investments can take place if financial engineering is used, where people are no more 100% rational, if behavioral Economics is considered, where economy is chaotic even if individual are not, where beliefs may generate monetary crisis, based on speculations and currency dynamics, where even stable economies can become unstable based on financial crises. In addition, the authors consider contemporary economy as a place of technological leap increased by the revolutionary computer effect on economy and as a place where comparative advantage might be considered an accident.

In the context of marketplace, marketplaces and even metamarkets, not only marketing activities, but also businesses change as Kotler and Keller (2006) argue, explaining that several macroeconomic forces have created new behaviors, as well as opportunities and challenges. Litre (2011) connects changing behavior to business results and explain how a change in behavior generate a change of the consequences

Therefore, in order to better understand the business behaviors, current global market is a good start. In most cases behaviors are considered connected to the companies' values. In many cases companies express their behavior as a consequence of their declared values, but specialists revealed the contradiction between statement and effectiveness, meaning between declared and effective behaviors. Engle (2017) provides some ideas for the alignment of the behavior with the company values, such as studying employees' behavior and offering them proper training, or building feedback capacity in the company.

Important feedback for the businesses for what they do is given by their customers. In order to show their interest in the level of satisfaction of their customer needs, businesses have developed strategies and policies. Jobs and departments have been created to respond to this organizational pre-occupation. There is always room for improvement related to policies effec-

tiveness in the so complex and dynamic current global market. In other words, many companies have integrated customer care in their organizational daily life, but this is not enough. It is important that all actions that are developed in the area of customer care be more than adopted, they must be effective in the implementation process. Changing customer care interest from simple organizational changes towards a way of business life is a real challenge. In fact, customer care policies must not only be real ones, like a set of existing standards, but they must be effective in the sense of effective proper behaviour.

4.2. Competition in the global market – opportunities and threats

Competition in the global market creates a context of opportunities and threats for companies and industries. Understanding competitive forces in the current environment is a good start for business management to realize its capacity to face all these challenges and to take advantageous decisions.

Kotler and Keller (2006) explain the concept of global in relationship with industries and companies: a global industry refers to the case of organizations that are strategically positioned at geographical or national markets and affected by their global positions, while a global firm is the case of a company which is present in two or several countries and is characterized by a specific advantage not reachable by national companies from financial, production, research, development, logistical, marketing etc. point of view. In addition, the authors propose several competitive strategies as observed in Figure 4.1. In the same figure, the famous Porter's competitive strategies are also revealed. Porter (1985) differentiates the strategies according to the competitive scope and advantage. At an international level, competition is to be considered multi-domestic based on Porter (1990), when competition is independent in every country, but the industry is present in several ones; multinational firms can also be real competitors, in this case the competitive advantage is limited to the countries where the company acts. Moreover, the same Porter's view on reaching selective advantages in other nations indicates possibilities of global production, foreign sourcing and technological development.

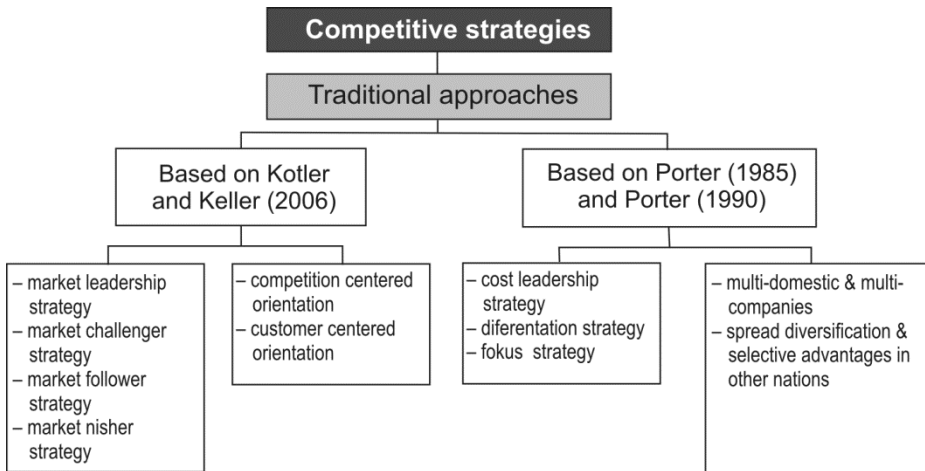


Figure 4.1. Competitive strategies – traditional approaches

Source: own contribution.

Current approaches related to competition can be expressed in many ways. A simple synthesis of these includes the differentiation as a proper solution to the current competition pressure on one hand and the need of understanding the constrains in terms of access to markets and resources. Therefore, based on Trout and Rivkin (2000), the survival solution in the current era of competition is that companies must differentiate themselves from other businesses, otherwise, they die; they also states that the quality and client orientation are rarely differential factors, as well as price and even creativity and shows as important factors to differentiate, among others: being the first, leadership position, tradition, market specialization, preference, way of manufacturing, being on fashion. Companies are facing a new reality where in order to compete globally, a new understanding of the markets and resources is necessary, as well as of the possibilities to locally adapt and face the networking pressure, according to Bhattacharya et al. (2010); they also argue that in order to develop the global advantage strategy, business managers should reconsider the research and development as a market growth generator, enter into selective partnership and alliances, address to midmarket and gain the middle class as consumers. These approaches are reflected in Figure 4.2.

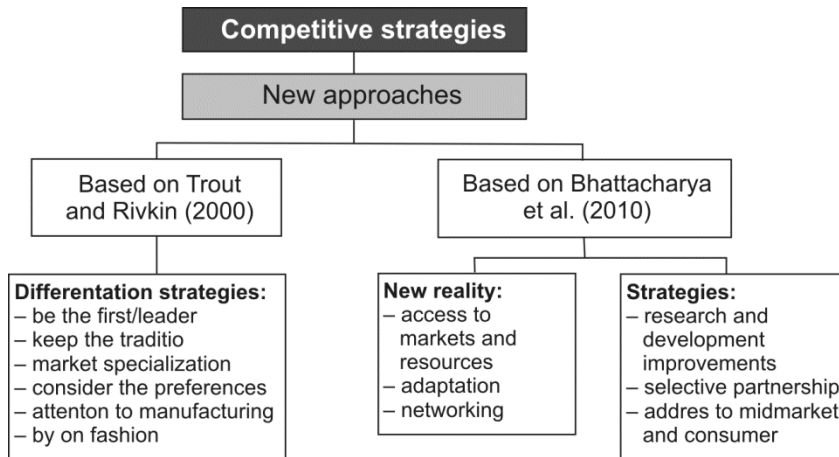


Figure 4.2. Competitive strategies – new approaches

Source: own contribution.

In fact, the contemporary economy is a sharing economy as Stephany (2015) describes the new context of business; he explains the business of sharing as a magic marketplace, where new opportunities are found, not only for existing companies, but for start-ups and in terms of connectivity or networking which is more and more global and mobile, on the one hand and social, on the other. Under such a context the forces identified by Porter (1979) as rivalry among the current competitors, bargaining power of buyers and suppliers, threats of new companies and of substitutes become questionable and limited according to Dalken (2014). He states that the new forces to be considered are digitalization, globalization and deregulation which make the market place more dynamic and unstable, due to the market extension, start-ups threats, less governmental regulations for some industries and many more.

New opportunities and threats can also be observed from professional associations or consulting or multinational companies in the business area. In *Table 4.1*. some concrete challenges are integrated revealing real and actual concerns for individuals and societies, as well as for business.

Table 4.1. Challenges of the current context – practical approaches

Company insight / Author	Challenges of the current context; opportunities and threats – short overview
EESC – European Economic and Social Committee (2018)	<ul style="list-style-type: none"> • protectionism is not considered an option for Europe. • more investments in innovation. • more attention to workers' rights and environmental issues. • economic models based on knowledge, innovation, high-level skills.
European Commission (2017)	<ul style="list-style-type: none"> • globalization and new technologies. • security issues and populism. • climate changes. • economic power decreases. • population decline and aging. • unemployment for longer term and even for young people. • high debts.
EY – Ernst & Young / Weinberg Mark (2017)	<ul style="list-style-type: none"> • innovation is disruptive, but it can become inclusive. • gig economy introduces new type of employees and workers: short term engagement, independent workers and freelancers. • growing market for digital work • innovation
Deloitte / Renjen Punit (2018)	<ul style="list-style-type: none"> • a fourth industrial revolution affects economies, jobs and societies. • physical and digital technologies combine. • digital enterprises evolve.

Source: own contribution.

All these challenges are opportunities or threats for businesses. They are issues, companies have to deal with, no matter what industry they operate in. One can see how companies through their behavior. A crucial component of the current context for businesses, easily noticeable from the above-mentioned issues is the innovation which is most frequently considered at European and institutional level. Dima, Cantaragiu, Istudor (2018) states that competition brings advantages to consumers by imposing companies to innovate; in addition, they show that different situations may generate competi-

tion law to be exceeded by decisions which in fact would lead to a lack of corporate responsibility. This explains why competition policies influence the businesses capacity to innovate in a proper and responsible way.

Therefore, institutional behavior is the business' way of acting towards competitive market challenges. When the competitive forces generate too high pressure on companies, behaviors become at least inappropriate. This is the context in which ethics and ethical behavior adopted by businesses are needed.

4.3. Ethics and ethical business behaviors

Ethics is not easy to be defined. There is no doubt that Ethics is a science, generated from moral philosophy. According to Mitu & Manu (2010), Ethics is the science of moral reality, dealing with right or wrong, and duty. They also explain the difference between analytical Ethics, which studies the causes of actions and normative Ethics, which is also called applied Ethics and which is learned from practice and provides orientation towards what is to be done, without mentioning how to do things. Business Ethics is also included in applied Ethics. In the *Internet Encyclopedia of Philosophy*, applied Ethics is explained based on two considerations which an issue must fulfill in order to be considered as a matter of applied Ethics: to be controversial, meaning that there are groups for and against and to be a moral issue. In the Cambridge Dictionary, *moral* is explained in connection to standards referring to good and bad behaviors, to fairness and honesty etc.; this description also links *moral* to individual beliefs which has nothing to do with laws or regulations.

Business Ethics is sometimes called *Ethics of Business Competition*. Estola (2007) explains Ethics of competition as a set of duties and attitudes entrepreneurs have or must have towards different stakeholders, such as customers, employees, government and other companies. The author also states that these duties and attitudes are more likely to be kept towards customers and employees, since cheating these groups will sooner or later affect institutionally and therefore, cheating government or other firms is more frequent. Under such circumstances, he simply connects the busi-

ness area with sport industry and sustains the huge importance of the regulation or law in order to control the unfair competition. In a less regulated market, cheating companies have low costs and become more competitive in comparison with the fair ones. In addition, in such a pressure-featured environment, individuals and companies have to face a high temptation of cheating. Ariery (2015) explain how and why we cheat; he demonstrates that a little cheating exists everywhere, that people generally think that others cheat more, meaning that individuals tend to underestimate their own cheating level and that moral lessons must be learned before and not after cheating.

Ethics and Compliance Initiatives (ECI) conducted a research called *Global Business Ethics Survey* (2016) in 13 countries addressed the employees in public, private and non-profit organizations and discovered that doing *the right thing* at work means non corruptive behavior, actions to protect the environment, respect for employees' basic human rights and transparency. Based on the same survey, in terms of the relationship with the customer, cheating is observed mainly as violation of different contractual terms by both top and middle managers, lying to them, or unfair use of personal information.

Successful companies are not mandatory ethical, since success is not directly and always connected to ethical behavior. Success is connected to the main goal of marketing functions : increasing customer satisfaction and maximizing the profit. Hersh (2015) defines simply the business success as a result of an organization consisting in generating happy existing customers and attracting new customers, as well as earning profit. *Figure 4.3* shows the importance of correct understanding of the marketing functions in relationship with the ethical behavior provider and receiver. Companies behave more or less ethically, create rules and act in a way they are the only ones who know exactly what and how they do things, while consumers are the receivers of their behavior.

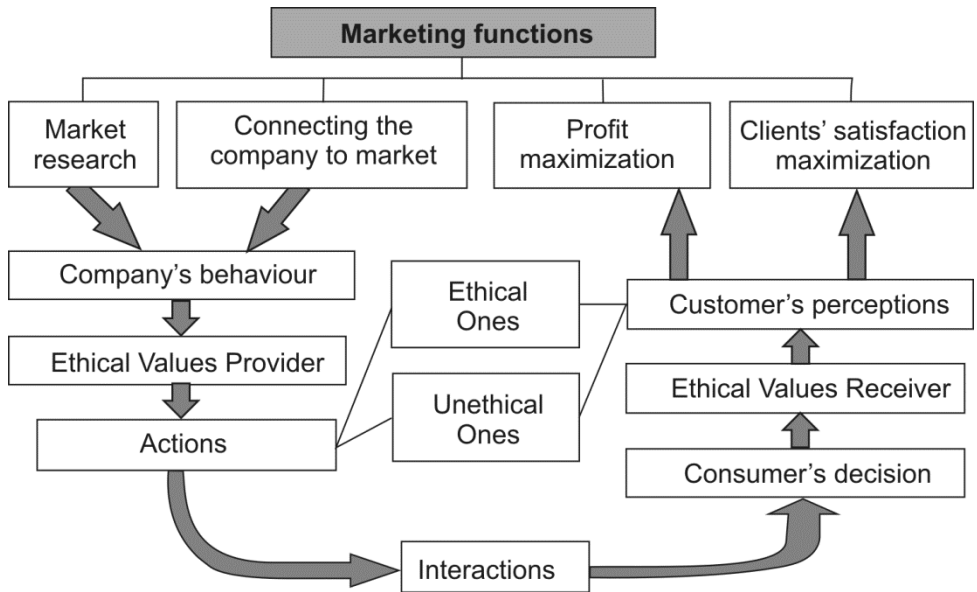


Figure 4.3. Marketing functions and the ethical behavior provider versus receiver

Source: own contribution.

Therefore, in order to be successful, ethical behavior is sometimes forgotten. When it is not, integrating ethics in organizational strategies confer business stability, credibility and reputation. Pastin (2015) proposes five strategies of success that incorporate ethical principles, such as: producing a sound product, choosing proper partners, managing the situations of employees-customer interactions, identifying ethical values, considering opportunities from an ethical point of view, as well. Therefore, some more actions and behaviors can be revealed in *Table 4.2*, considering the movement from *what to do* to *how to do*.

Therefore, the importance of an ethical behavior for both individuals and companies is tremendous for all parties. What is to be clarified is that rules do not guarantee that the behavior will be definitely ethical. In fact, being ethical is a way of living and acting and could be promoted even in the absence of regulation. Nevertheless, specific procedures help in a pressure-affected competitive market and economy.

Table 4.2. Successful strategies incorporating ethical principles

Ethical considerations – what to do	Companies' behaviors and actions – How to do
Consider the customer' perspective: ethical behavior requires a high understanding of the customers.	<ul style="list-style-type: none"> • offer the correct value in exchange for the product or service. • do research and observe customer's habits. • understand factors of the buying and not-buying process. • exceed customers' expectations.
Be transparent: ethical behavior requires trust from all interested parties.	<ul style="list-style-type: none"> • provide fair information: clear and correct and complete. • look for feedback and accept criticism. • look for ethical partnerships. • invest in community and society. • promote ethical values.
Think on a long-term: ethical behavior cannot be achieved at once.	<ul style="list-style-type: none"> • consider only proper opportunities. • generate buying experiences to customers. • accept change for better.
Invest in internal environment: ethical behavior is generated from inside and observed outside the company.	<ul style="list-style-type: none"> • invest in employees. • promote the ethical principles, values, standards and code. • create rules and accept exceptions as part of the rules. • invest in the organizational quality culture.

Source: own contribution.

4.4. Ethical versus unethical companies' behaviors – rules and self-decision

A company's behavior is a set of actions a company or one or several departments of it take in order to accomplish its objectives. Sometimes it is called corporate, business or more classical organizational behavior. In *Table 4.3* some very simple and similar meanings are extracted from different dictionaries or other sources.

Table 4.3. Company's behavior understanding

Concept / Source	Meanings
Behavior. Dictionary.com & Business Dictionary	<ul style="list-style-type: none"> • observable activity. • cumulative responses to internal and external stimuli. • any kind of individual or collective response to different actions, persons, environment
Organizational behavior. Business dictionary	<ul style="list-style-type: none"> • actions and also attitudes of individuals as well as of groups. • actions of individuals and groups towards other individuals and groups. • actions of individuals and groups towards organization.
Corporate behavior. Ebrary.net.	<ul style="list-style-type: none"> • involves legal rules and refers to ethical codes. • includes social responsibility. • must be ethical. • must be seen as being ethical, as perceptions are important.
Business behavior. Thurkow at al. (2016)	<ul style="list-style-type: none"> • organizations do not change their behavior, but people do. • behaviors generate business value. • creates rules and accepts exceptions as part of the rules. • invests in the organizational quality culture.

Source: own contribution.

Therefore, a company's behavior is how it acts through its people (both managers and employees) in relationship to each other and to external parties in general, and as a response to different stimuli which have two aspects of interpretation: one is internal, generated from rules and procedures, documents and methodologies, and one is external, generated from the others' perceptions. In other words, both people and companies can be considered ethical or unethical, as seen in *Figure 4.4*.

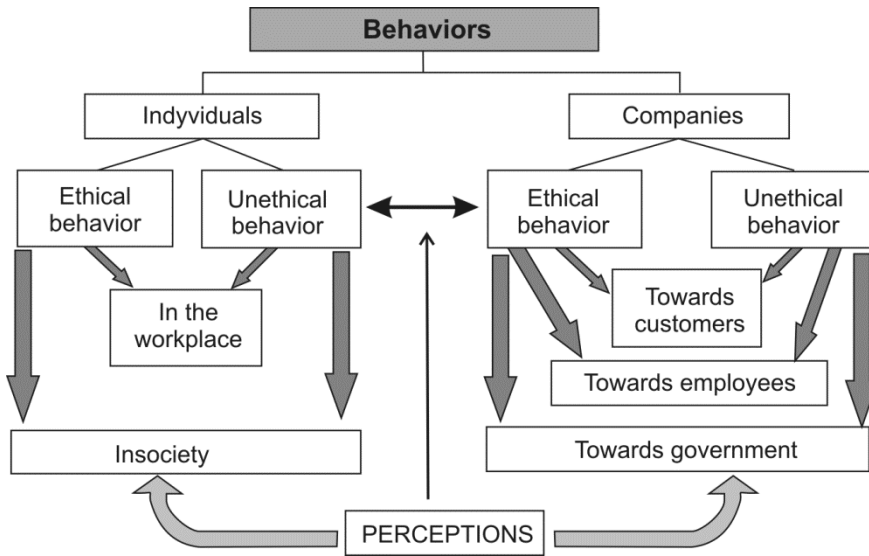


Figure 4.4. Ethical and unethical behaviors of individuals and companies

Source: own contribution.

Individuals that are ethical can make the difference between right or wrong, as Hill says and show to others a good behavior, treating others in the way they would like to benefit from them, while ethical businesses are related to honesty and fairness based relationship the company develops with others, mainly employees and customers. Connecting individuals behaviors to business behaviors, some correlations appear between ethical and unethical ones. When ethical people work in an ethical company, employees behave accordingly to the company's values and principles and there is high potential for a long term business development and lifecycle. On the contrary, when unethical people work in ethical companies, meaning that the company's leadership is ethical and fair to government and society, sooner or later, the external parties will get a perception of an unethical business behavior. At the same time, if ethical people work in an unfair internal environment, they will sooner or later quit, being unable to accept cheating as a way of working. Furthermore, if both employees and companies are unethical, there is much possibility to both of them to have a short existence in the workplace and marketplace. In *Table 4.4*, correlations among ethical and unethical behaviors of people and companies are to be observed.

Table 4.4. Ethical versus unethical individual and business behaviors

Behaviors		Individual behaviour	
		Ethical	Unethical
Company behavior	Ethical	<ul style="list-style-type: none"> • individuals are fair. • companies are fair. • society is positively affected. • government is positively affected. • customers are satisfied. 	<ul style="list-style-type: none"> • individuals cheat. • companies are fair. • society is negatively affected. • government is both positively and negatively affected. • customers are potentially discriminated by employees.
	Unethical	<ul style="list-style-type: none"> • individuals are fair. • companies are unfair. • society is positively affected. • government is negatively affected. • customers are badly affected by companies bad behaviors. 	<ul style="list-style-type: none"> • individuals are unfair. • companies are unfair. • society is negatively affected. • government is negatively affected. • customers are facing a bad treatment from both employees' and companies' behaviors.

Source: own contribution.

When ethical behavior is wanted by business leaders and individuals behave properly, then Ethics is more than a set of principles and moral values in the company, it is a clear component of the organizational culture, a way of working. Instead, when ethical behavior is wanted, but employees continue to cheat and behave unethically, business leaders tend to regulate more than necessary the Ethics integration in the company; so does the government. Core documents are mandatory to be adopted in companies in order to provide an internal ethical framework related to employees' behavior towards themselves and external parties, such as: codes of Ethics, standards, guides etc. More dangerous behavior is when unethical type of company's behavior is accepted by the leaders, no matter how their employees would act. Unethical behavior of the company will sooner or later generate a loss in the loyalty of the customers, a loss of the possibility to develop long-term relationship with them, some litigations, a decreasing level of the investments and a negative perception among the investors and other stakeholders, as

Newman (2015) explains. He also states that internally, confusion, dishonesty, stress and conflict appear, meaning a poor work environment and finally, a clear and direct downfall of the company.

In marketing activity, Marketing Ethics is often correlated with social responsibility. Kotler and Armstrong (2008) explain several marketing practices from their effects on consumers, society and other businesses. A synthesis of these criticized marketing practices is included in *Table 4.5*.

Table 4.5. Marketing practices based on Kotler & Armstrong (2008) – criticized

Marketing practices	Examples
1. Effects on consumers	
High prices.	<ul style="list-style-type: none"> • different costs are high, such as distribution cost. • mark-up price is high. • promotional costs are high, such as for advertising or sales promotion.
Deceptive practices.	<ul style="list-style-type: none"> • pricing: false advertising. • promotion: misrepresentation of some features; false attraction of customers. • packaging: false labeling, wrong terms.
High pressure selling.	<ul style="list-style-type: none"> • persuasive sales people. • special training for sales people to convince consumers to buy.
Unsafe products.	<ul style="list-style-type: none"> • products generate harm in the usage or consumption process. • products offered in bad quality.
Planned obsolescence.	<ul style="list-style-type: none"> • fashion changes too fast. • materials that will break are used in different productions.
Bad treatment to disadvantaged consumers.	<ul style="list-style-type: none"> • large stores are absent in some geographical areas. • insurance conditions are different.
2. Effects on society	
Too much attention to materialism.	<ul style="list-style-type: none"> • high interest for material things. • false wants appear. • businesses create needs.
Not enough social goods.	<ul style="list-style-type: none"> • private goods may impose more public ones. • social costs increase.

Cultural pollution.	<ul style="list-style-type: none"> • too many commercials everywhere. • useless information is spread to uninterested people.
Too much influence from political power.	<ul style="list-style-type: none"> • less mass-media autonomy. • trust and credibility decrease in some informational sources.
3. Effects on other businesses	
Different practices.	<ul style="list-style-type: none"> • competition decreasing. • big companies dominate the small ones and these become subject of acquisition.

Source: own contribution.

Many other examples can be identified. Changing the behavior from an unethical one to an ethical one is not simple. Armstrong & Stephens (2005) explain the organization dynamics and state that a behavioral change involves several steps towards performance improvement through changes in the way people behave. Specific documents on ethical issues help the organization in the process of creating and consolidating an ethical-based culture and behavior. Nevertheless, these documents cannot fill in the lack of an individual motivation for change. In fact, behaving ethically is a self-decision, with or without ethical documents internally adopted. The *Ethics and Compliance Initiative* explains the role of ethical documents, mainly of the code of conduct, as being a public statement which contributes to better decision making, provides better understanding of the organizational mission and values, provides proper and relevant guidance for all employees, help the leadership to better manage the different ethical issues that are unavoidable and of course, set ethical standards and communicate them for a proper ethical behavior.

4.5. Consumer care policies

In the current context, the *consumer care* concept is more and more important for both companies and consumers, as providers and receivers of consumer care. On the one hand, customer care is an obligation the company is accepting and willing to deal with, being an important source of knowledge on consumer behavior. On the other hand, consumers are more aware of their rights in relationship with a company and also aware of the fact that they are entitled to ask for high standards of consumer care. The *Collins Dictionary* explains consumer care as a work consisting in looking after consumers and generating satisfaction for them. In *Figure 4.5*, consumer care is clearly described.

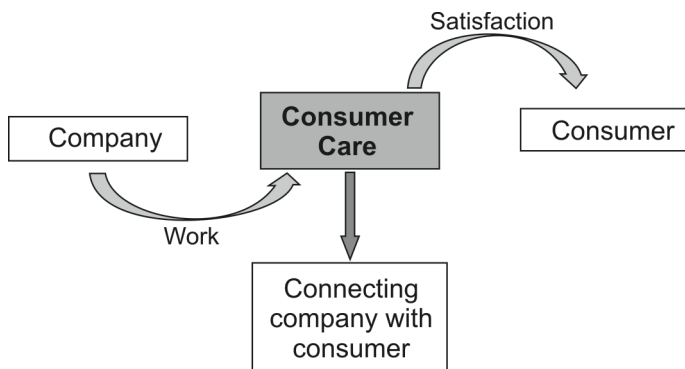


Figure 4.5. Consumer care as work for companies and satisfaction for consumers

Source: own contribution.

Therefore, consumer care is of a tremendous importance in connecting companies to consumers, which from the marketing activity point of view has to do with one of the marketing functions that help companies adjust to the market requirements.

The process of connecting companies to consumers is a complex one. According to Kotler and Keller (2006) it implies at least three possibilities. One is the process of building consumer value, even a life-time one, which implies attention to consumer perceived value and profitability. A second

one refers to all set of actions generating an increasing consumer satisfaction; therefore, satisfaction is many times an important marketing objective in different surveys. At the same time, a third possibility is investing in developing consumer relationships, meaning loyalty procedures, managing complains and also reducing customer defections.

Experts from *Canada Business Network* provide a guide of consumer care for entrepreneurs and several examples are included in four areas: consumer feedback procedures, consumer loyalty schemes, techniques for increasing sales and dealing with consumer complains.

Consumer care policies show companies' interest for developing and consolidating an ethical behavior. Unfortunately, in many cases, these organizational procedures reveal only a declarative interest of the company in being and act ethically, which is not the same with effective behavior. That is why consumer awareness is important to provide protection and, above all, knowledge.

Conclusion

Understanding the market on which the company operates or want to begin to operate is the key to the business success. The contemporary dynamic context makes marketplace a place of both opportunities and threats for existing and new companies and products. In fact, how a market operates is no longer a clear description to be incorporated in a stable market strategy. Companies have to understand the complexity of uncertainty of the market in a digital society where new type of relationships must be established. On the one hand, a new type of relationship with rival companies or potential partners is to be considered, networking being a concrete solutions of practices to exchange and even to learn up to a point from others' experiences. On the other hand, a new type of relationship with the clients, existing and new ones must be continuously invested in, at least for two simple reasons: firstly, competition is available and any company's client can become a former client any time if for one consideration or another he or she considers that changing the supplier is preferable; secondly, consumers become better and better informed and this is a consequence of

digitalization and awareness increasing in all areas. In fact, the contemporary relationship among people and companies generate a new type of market mechanisms, more oriented towards a collaborative work, sharing ideas and knowledge, for mutual advantages. Competitive strategies include new approaches in terms of differentiation, in many cases, companies which used to be considered rivals, become partners, sharing common values and objectives. The pressure of being innovative, of better market positioning involve companies and their leadership in understanding the need of ethical behavior. On short term, a declared behavior helps being accepted as a devoted company towards its values to be accepted, but, on a long term, this is no longer enough. The way from a declared behavior to an effective behavior from an ethical point of view may be short or long, a fact which not all companies are willing to take. Market is not ready to support only the ethical oriented company's behaviors, whereas there is a huge trend towards a better public communication of fair versus unfair behavior.

Marketing practices are more shared and integrated either in fair or unfair behaviors, being a learning process for both companies and consumers. In this process, different organizations such as institutions or associations evolve from this sharing process of good and bad practices. In other words, looking for better positioning, companies should share more what is ethical in terms of their activity and incorporate other company's experiences in their own.

Future research might include topics related to a comparative market analysis of different industries from the ethical versus unethical point of view, a survey dedicated to consumer's opinion on how ethically behaving companies are recognized together with a comparative study dedicated to a better understanding of the correlations between individual behavior versus institutional behavior, in terms of the employees' and managers' collective individual behaviors.

Chapter 5

Company practices requiring consumer protection

Italo Trevisan* & Corrado Malberti**

Introduction

The term *commercial practice* means any action carried out by a firm or professional person in relation to promotion, sale or supply of goods or services to consumers. The commercial practice is considered as a *sharp practice* (*unfair practice* in the language used in the EU directive 2005/29/EC, which regulates this matter in the EU) when – being “contrary to the requirements of professional diligence” – it is deceitful, or in any case able to distort to a significant extent the behaviour of the average consumer to whom it is aimed.

The commercial practice is unfair either when it is *misleading* either through action (giving false information) or omission (leaving out important information) or when it is *aggressive* (a practice that aims to bully the consumer into buying).

The European directive defines the former as a practice that “contains false information and is therefore untruthful or [...] deceives or is likely to deceive the average consumer, even if the information is factually correct” and causes the consumer “to take a transactional decision that he would not have taken otherwise”. Many are the elements whereon this deceitfulness may impinge. They range from the nature of the product and its cha-

* Author of Chapter 5.1, 5.2, 5.3, 5.5.

** Author of Chapter 5.4.

racteristics and use to its price or price advantages, from the characteristics of the producer or distributor to their use of symbols and brands.

The same directive defines the latter as a practice that “significantly impairs ... the average consumer’s freedom of choice or conduct with regard to the product and thereby causes him ... to take a transactional decision that he would not have taken otherwise.” This impairment may be due to harassment, coercion and undue influence. The recourse to sharp practices is certainly not a novelty. In any time, in any country, some traders¹ have resorted to unfair or illegal practices to increase their sales and profits. The fact that the main motivation of any businessman is his own interest was clearly spelt out by Adam Smith:

It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love [egoism], and never talk to them of our own necessities but of their advantages (Smith, 1776).

The market, then, does not require people to do well to others. This does not mean that most businesspeople are unalloyed egoists who are simply looking for the best way to reach their advantage without any consideration for others. In order to have an exchange it is necessary that the parts in cause have a certain degree of confidence in each other, at least in relation to their receiving the item they are looking for at the time of the transaction. If one part does not consider the counterpart as reliable or believes the item object of the exchange does not meet the negotiated requisites, the business relationship breaks down. Confidence is and has been the element that is been present whenever the people met to satisfy their needs interchanging products and services (Smith, 1776).

Fraud or the use of force is ‘forbidden’ by market forces because by resorting to them the trader would lose the confidence of the potential customers. Moreover, as behaving in an ethical way is the best system to cre-

¹ In this chapter, the term ‘trader’ is used to signify any firm, businessman, professional that are ‘sellers’ of goods or services.

ate the necessary confidence, market forces favour such behaviour. The same Adam Smith also remarked that:

... the success of these people, nearly always depends on the favour and good opinion of their neighbours and equals, and that can seldom be had unless their conduct is tolerably regular. So the good old proverb, that honesty is the best policy, holds true here; and we can generally expect a considerable degree of virtue in such situations, which are [...] the situations that the vast majority of mankind are in (Smith, 1759).

The vast majority, however, is not the totality. Therefore, it is unavoidable that some individual resorts to improper means to gain “their advantage”. Consequently, norms that outlaw certain practices have always been present in any country’s legislation. Besides dishonest or aggressive behaviour by traders, also anti-competitive behaviour was punished². Indeed, norms aimed at avoiding that traders engage in fraud or unfair practices (and punishing them if they do so) have always been present in any country. However, in many cases, an important reason for those norms was to make sure that nobody, through these underhand ways would gain an advantage over competitors. It was deemed that the protection of consumers’ interests would be assured by assuring a fair competition in a free market of consumer goods and services.

The main point of the enactment of specific consumer protection legislation is that normal commercial law may not manage to afford consumers full protection, also because not always consumers manage to pursue their legal rights due to their lack of knowledge about redress procedures and their low bargaining power versus the sellers. As a remedy, “public law may be used particularly to: a) protect consumers and to correct flaws in the operation of the market in order to protect fair and honest traders from unfair competitors; b) punish traders for practices such as unscrupulous sales tactics; and c) establish mechanisms for the operation of consumer protection institutions” (UNCTAD, 2016).

² Already in Roman times, laws were enacted to punish market-rigging and interference with commerce (such as deliberately and insidiously attempting to disrupt shipping of grain to Rome, considered a capital crime, given the political sensitivity of this supply).

An important reason for the increased attention paid to consumer protection is linked to the evolution of the markets and the attitude of the consumers. For a long time, the observation that some sellers would resort to sharp practices elicited norms against fraud, but a limited effort to check practices that are unfair to the customer but fell short of fraud. The common sense rule *caveat emptor*, already present in the Roman law³, nowadays clearly limited by consumer protection measures, still requires a degree of attention and carefulness from the consumer⁴. However, while the *caveat emptor* principle was reasonably requiring the buyer to be careful at a time when goods were simple and the buyer could inspect and compare the goods before buying, it is less plausible nowadays when a sizeable part of the purchases may be at a distance (earlier on through postal catalogues, now through the e-commerce sites) or the goods are complex and the buyer has limited or no specific knowledge⁵.

The introduction of the concept of product liability in the early twentieth century widened what was required of the producer and seller in terms of making sure that their action would not result in harm to the buyer. Still, the general attitude of the consumer in a market where there was an excess of demand over supply was to accept the products and the practices of the seller without much complaint, unless having actual harm from the purchased item. The situation started changing when the market of certain consumer goods became mature. The mass production and distribution of those goods created a situation of excess of supply over demand and the consumer had a wider choice. The contemporary increase in wealth and disposable income in the developed countries enabled the consumer to

³ *Caveat emptor* was the guiding principle in the buyer-seller relationship until the mid-nineteenth century. This was justified by the fact that the buyer had the possibility to see and compare the goods (as in the case of the medieval town market) and most buyers had a reasonable knowledge of the goods. Therefore, the buyer could use this knowledge and be careful or bear the cost of carelessness. Only if the seller made a false statement about the goods he was selling could be considered guilty of deception.

⁴ Although from certain sentences it appears that a certain jurisprudence accepts that if something happens to a consumer behaving in a thoroughly stupid way, this could still be faulted to the seller, paying attention to and being careful about what is bought is still a proper attitude of the consumer (see Ch. 1).

⁵ From the second half of the nineteenth century, with the spreading of industrial production of consumer goods and the growing role of intermediaries in the distribution of those goods, the ability of the buyer to evaluate properly the characteristics of the goods and the conditions of sale decreased and some sort of liability was increasingly put on the seller.

become more selective. Moreover, the increased wealth allowed consumers to satisfy their more immediate needs. This, as Maslow indicated (Maslow 1954), elicited the desire to satisfy higher-order needs, as well as the redefinition of some lower-order ones. The practical consequence of the latter case in relation to consumer protection was the increased demand to contrast sharp and unfair practices by makers and sellers of products (and services, too). In addition, this has stimulated the birth and growth of consumer associations, recognised as legitimate representatives of the interest of consumers. In fact, consumer associations have become a strong force that even the largest multinationals have to reckon with. Such associations are now routinely called upon to represent the voice of consumers in the drafting of norms affecting consumers. Additional very important tasks that such associations perform is providing consumers with independent opinions on products which they have tested and be the caller of first instance for consumers who feel that they have been victims of unfair practices.

There are various different areas where incorrect behaviour and unfair practices can happen. We can classify them into five groups. Practices related to products, communication, price, contracts, and Internet.

5.1. Product related practices

Excluding the case of the most simple and undifferentiated goods (e.g. kitchen matches) suppliers (be they producers or intermediaries) and consumers have different levels of knowledge about the item being marketed. The producer knows the technical features of the product and its characteristics, as well as its costs and is aware of its weaknesses and possible faults. The consumers do not have the possibility to acquire all the needed information nor the competence to evaluate it.

In this situation of asymmetric information, a less than scrupulous seller may be tempted to take advantage of the inability of the buyer to recognise weaknesses or faults of the product to make and sell products that do not have the characteristics, the performance or the durability that can be expected of that type of product or do not respect hard to measure specifications.

Many firms, under the pressure to perform, to cut costs and to beat the competitors may be tempted to take short cuts in relation to the quality of their products or their adherence to specified standards (does the thickness or the number of the iron rods in the reinforced concrete in your building correspond to the specifications?). Even more often, the firm that more or less wittingly puts on the market a defective product tries to refuse any responsibility for the consequences of those defects. It is in these cases that appropriate norms and good support (such as the one given by consumer associations) make it possible for the consumer to look for redress.

The problems for the consumers related to the product stem both from the firm's improper actions and – more often – from its unwillingness to answer for its incorrect actions, whether knowingly or initially unknowingly done. Three types of matters require consumer protection (which is assured by product-liability legislation). These are related to a) design defects, b) manufacturing defects, and c) failure to warn (called marketing defects).

Design defects

A design defect is due to some flaw or mistake in the design of the product, which makes it potentially dangerous when the product is made perfectly, even using the best materials, and is used for its intended purpose. An example can be a fan whose protective guard has too few bars, leaving a large space between them. A user moving the fan while it is on might slip his fingers through the large spaces between the bars and injury himself. A design defect can also occur if it causes the product to be inherently useless (a hair dryer whose two-speed fan is oversized for its electric motor and whenever the user puts it at stronger airflow level the device shuts down). In effect, it is possible to say that a design defect is planned with the product; therefore, each unit manufactured according to the product plan presents the defect.

Of course, the existence of the possibility of injury to the user when making use of the product is not in itself a sign of design defect. Certain products are inherently dangerous. It would be possible to remove many risks linked to their use only by forgoing those product features that make them useful and required. Such products would become useless, therefore de-

fective, if made safe. For example, a carving knife that is so dull to make sure that the user does not risk cutting himself would be totally useless.

Moreover, some 'design defects' may be purposely present, such as when 'one litre' bottles contain in reality 96 cl, as is made explicit in the label.

Manufacturing defects

A manufacturing defect happens when, in the manufacturing process, a product is made that does not follow its design in some detail. As a consequence, the product is faulty and possibly dangerous. Poor-quality materials are one of the reasons why the product departs from its design (the screws that fix the shelves of a library to the sides of the cabinet are supposed to be of strong resistance metal, they are instead made of cheaper, and brittle, plastic; when a shelf is fully loaded the screws give way and the shelf collapses). Another reason is shoddy workmanship, sloppiness in assembling the product, due to inattentive or inexperienced personnel (a bottling plant should be insulated from the exterior but the door is kept open and the wind blows in dust and other material that finds its way into the bottles).

Therefore, the design of the product is good and would be safe and working properly if it were made as designed with material of a better quality or assembled by a more careful or experienced worker. This also means that the manufacturing defect may affect only a single unit of the product or a small batch.

Marketing defects

A marketing defect (also called "failure to warn") has nothing to do with the product itself, which has no problems and is made correctly. However, a product can present some danger to the user even if it is well designed and appropriately manufactured. A marketing defect occurs when the producer does not give clear instructions about how to use – or not to use – the product, in order to avoid malfunction of the product or even injury to the user. The producer must make sure that the user is clearly⁶ warned

⁶ This means that the warning cannot be so imprecise or ambiguous that an average user would not understand what the danger is or how it can be avoided. The warning should be easy to read and understand, placed in an easily visible place and make use of pictures if necessary.

about foreseeable risks deriving from the use of the product. The warning should cover all uses that can reasonably be foreseen, including when the product is used incorrectly (for example, boxes of cotton swabs warn not to use them to clean the ear canal, this not being the task for which cotton swabs are made)⁷. Seldom would a firm use lack of information about the proper use of its products as a way to mislead the consumer, but it is not rare that a firm does not give this information or when it gives it, information is not exhaustive or clear. Therefore, even when it is not done on purpose, a failure of the firm to inform the customer about how to use the product may still have negative consequences for the unaware customer. Firms are often sued because of this reason and a sizeable proportion of product liability court cases are linked to “failure to warn”. Moreover, failure to warn is used to mislead the customer when the firm knows about flaws in the design or in the manufacture of its products and, instead of taking action to make the product right ignores them and lets the customer believe that everything is in order.

In the present conditions where the market for many consumer goods is saturated, the economic obsolescence of new products is faster, the loyalty of the consumers is increasingly shaky, and many firms try to remain competitive by faster innovation and better quality. Innovation and quality are costly. Among the costs that are linked to quality, we can mention here *prevention* and *appraisal* costs⁸.

Prevention costs are all the costs related to efforts made to avoid poor quality in the products and services produced and/or sold by the firm. Appraisal costs are all the costs related to measurement, evaluation and auditing the firm products to assure their conformance to quality standards and performance requirements.

These costs are directly proportional to the stringency of the requirements for inputs and the checks carried out to ascertain that they are ful-

⁷ This means that if somebody, using the cotton swabs to clean the ear canal (as many people do), causes damage to the eardrum, the producer can be considered responsible for that damage, unless the warning not to use the product in this way was clearly visible and understandable by the user.

⁸ A widely accepted typology of costs related to quality splits them into: prevention, appraisal, internal failure and external failure costs. See Sower, Quarles, Broussard. (2007: 123).

filled. Firms operating in competitive markets may be pushed towards a less stringent control over their output reaching the final consumer.

Keeping costs low and selling products at a high price is what gives a firm its margin of profit. In this situation, it may be profitable for firms to cheat about the quality of their products, charging consumers with a price that is higher with respect to the real value of the item.

Putting the price higher than the objective quality of the product warrants may be linked to the strength of the brand, to the status symbol attribute of the product and therefore the result of a successful legitimate marketing campaign. Nevertheless, if the gap between objective qualities of the product and its price becomes disproportionate, then the presumption of a practice aimed at taking advantage of an unwitting consumer becomes stronger.

In the usual market conditions of information asymmetry, companies may try to take advantage of the consumer, hiding the real quality of their products, using cheaper but not really suitable materials and components, hiding the possible flaws of their products, concealing manufacturing defects once they are discovered.

Cases of unfair product practices

In order to illustrate the various possibilities of unfair practices linked to products a few cases are briefly discussed below

Food industry

Foodstuffs are essential goods that everybody purchases. Food safety is of serious concern everywhere, among consumers and authorities and, hopefully, most of the producers. The food safety efforts aim to make sure that food available on the market is safely consumable and presents no risk to the health of the consumers. Unfair practices may affect four matters related to food safety. They are:

- ✓ Food contamination, which can be the consequence of damaged packaging, spoiled or infected food, food adulterated by addition of substances which can be very harmful;
- ✓ Use of restricted food additives;

- ✓ Incorrect or incomplete labelling; and
- ✓ Food expiration.

With food contamination, while in the case of damaged packaging or infected food the firm is not normally the cause of the problem (the firm would not use damaged packaging or knowingly acquire infected food), it could still be engaging in sharp practices if no action is taken to check whether the food is safe or to dispose of the items with damaged packaging.

An example is the producer of peanut butter who on receiving a consignment of peanuts at a cheap price does only a perfunctory check on the presence of moulds and does not test the consignment for the presence of aflatoxins. In this way, peanut butter with a harmful level of contaminant can be put on sale. In the case of damaged packaging, unfair practices may be detected if in order to lower costs, unsuitable material is used that reduces the capacity of the packaging to protect or preserve properly the food inside. For example, biscuits can be adversely affected by humidity; if the producer saves on the cost of packaging material, biscuits sold in tropical countries might be badly affected by humidity and disappoint the customer. Packaging can also be the cause of marketing defects (failure to warn). For example, most food that is preserved in jars must be sterilised and kept in a vacuum condition to avoid dangerous toxins developing. In most cases the customer is warned to check (by pressing on the screw-top of the jar) that the vacuum seal is still intact. Not giving this warning would expose the firm to the charge of unfair practices.

Adulteration of food with substances that have a lower cost than the normal ingredients is not unheard of, and sometimes these substances are quite dangerous.

Well-known cases are those related to the adulteration of wine. Adding sugar to wine must in order to increase the alcohol content of the wine (Chaptalisation) is a practice that, although illegal in some EU countries, is allowed – within limits – by EU legislation. It is used mostly by wine producers of the northernmost vine growing areas of France and Germany, where, because of the climate, normally the grapes do not have enough

sugar content, and some artificial sweetening is required to make a decent wine⁹. The practice is not dangerous and within the allowed limits is considered perfectly normal in many countries but consumers in other countries would feel short-changed if sold such a wine. Other forms of wine adulteration are not so harmless.

The “*antifreeze scandal*”. In 1985 several Austrian wineries – to increase the sweetness and body of their sweet wines in a bad harvest year – added diethylene glycol (DEG) to their wines. DEG is normally used as an industrial chemical or as an antifreeze agent; its lethal dose is about 40 grams¹⁰. Thankfully, in this case no deaths were recorded (since the first case of product adulteration with DEG, in 1937, a few thousand deaths have been caused by it).

The “*methanol scandal*”. The following year, 1986, a worse case happened in Italy. Some producers added methanol (methyl alcohol) to their weak wine, to increase its alcohol content. Methanol is very similar to ethanol which is the ‘drinking alcohol’ present in wine and any other alcoholic drink. Methanol is much cheaper than ethanol, but it is also toxic. An amount of 10 ml can cause permanent blindness, and depending on body mass, the lethal dose can be from 30 ml to 100 ml. Those producers put too much methanol in their wine and commercial fraud became manslaughter¹¹.

These scandals caused a deep crisis in the wine industry both in Austria and in Italy and were instrumental for the enactment of tougher and more rigorous legislation that allowed the wine industry of the two countries to recover in a short time.

Not only wine is subject to dangerous adulteration. Another famous and more recent case was the Chinese milk scandal. It involved milk and infant formula, which were adulterated with melamine, a chemical compound

⁹ In areas with a warmer climate, good wine with sufficient alcohol content comes naturally. In some Mediterranean countries, such as Italy, the practice of Chaptalisation is illegal. A possible positive side effect of global warming could be that, at long last, producers from those Northern areas might be able to make a natural good wine.

¹⁰ The use was discovered by analysis in Germany, possibly on indication by Austrian authorities whose suspicion was aroused by the large quantities of the substance acquired by one producer.

¹¹ Twenty-three people died and 90 became blind before the authorities managed to impound all the affected wine.

mostly used to produce plastics, resins and fire retardants. It may be added to food products in order to increase their apparent protein content. In particular, when added to milk gives the false appearance, in tests, of higher protein content, leading to protein deficiency in the formula made with that milk. Moreover, it is toxic (at the same level of table salt – 3 grams per kilo of body mass). Within three months from the first reported case of sickness, about 300,000 people had become ill and about 54,000 infants were hospitalised. Only six died but many more had some permanent damage¹².

Additional unfair practices by food producers are related to labelling. This issue is given much less attention by consumers, and consequently, by producers. In many cases, the labels do not report all the necessary information, sometimes are misleading and sometimes are faked.

Also fairly common, particularly in developing countries, is the practice of repackaging and selling expired food products. This practice is common not only among producers but also intermediaries.

Tampering with food is not the only unfair practice related to products. Practically any type of product can be object of sharp practices by the producer or the intermediary. We shall mention two cases that are well known.

Automotive industry

The automotive industry is probably one of the most subject to both design and manufacturing defects and many are the cases where badly designed details have caused accidents and the car makers – usually after a certain resistance – were compelled to recall and mend at great expense the models presenting that fault. A spectacular case of unfair practice was the so called ‘Volkswagen Dieselpgate’.

Volkswagen, already one of the leading automotive companies in the world, in 2007 defined a strategy aimed at making it the global leader of the industry. The strategy focused on four pillars: making sure of a solid financial position, increasing the number of cars sold to become the best-selling

¹² Also in this case the whole industry (and this time quite a lot of local producers were involved) suffered heavily, with 11 countries stopping all imports of Chinese dairy products. Chinese measures against the perpetrators were harsher than in Italy (were the two main culprits were sentenced to 14 and 4 years of detention): two people were executed, three received life terms and two 15 years jail terms.

group in the industry, becoming a top employer across the world, satisfying the consumers by selling cars of the highest quality. One of the foundations of this strategy, particularly of the part aimed directly to the consumers was respect for the environment. This was considered as a critical issue for attracting consumers and keeping them loyal. One of the areas where the attention to environment concentrated was that of the diesel engines (always a strong point of the German car industry) and continuous efforts to improve the diesel technology was an important plank of the plans to overtake competitors. Indeed, Volkswagen introduced various environmentally friendly vehicles, including *clean diesel* (Blackwelder et al., 2016: 5). In the following years, Volkswagen promoted its diesel vehicles as being among the most environmentally friendly and fuel-efficient vehicles on the market and obtained an impressive increase in sales, which led it to become the top selling car-maker in the world overtaking Toyota. The claim of having environmentally friendly vehicles rested on the tests that every country's road authorities conduct to make sure that the vehicles conform with the laws on noxious emissions. Among the most stringent rules and tests were the ones carried out in the USA, which the diesel models of Volkswagen always passed with flying colours.

In 2014 this strategy collapsed, because it was shown to be based on cheating. Researchers from the International Council on Clean Transportation (ICCT), with the support of researchers of the West Virginia University (WVU), conducted tests on various vehicles to ascertain whether they respected the standards set by the Clean Air Act in the US. Among the vehicles tested were some Volkswagen diesel models. At the same time, the California Air Resources Board (CARB) also conducted tests on the same models. The ICCT/WVU road researchers tested their vehicles under real driving conditions, while CARB's tests were performed in a laboratory, as all the conformity tests were done. All the vehicles tested by CARB, i.e., according to the norms of the road authorities, passed the emission tests. Of the models tested on the road, the Jetta and Passat models had dismaying results: their emissions exceeded the US emission standards between 5 and 35 times. The problem was due to a 'defective' device that modified the functioning of the emissions control system. Initially, Volkswagen denied any wrongdoing. However, the tests made by the company were vali-

dated incorrectly, raising the concern that someone inside the company was aware of this issue and allowed the commercialisation of these models to go on regardless. But then, under further pressure from authorities and consumer organisations it admitted that “it had deliberately equipped its line of Turbocharged Direct Injection (TDI) diesel engines with a defective device that was intended to bypass, defeat, or render inoperative elements of a vehicle’s emission control system during emission testing” (Blackwelder et al., 2016: 1), in order to allow the models equipped with this engine to pass the tests for compliance to the law. This had immediate repercussions worldwide, leading to legal actions against Volkswagen, the recall of millions of cars, huge fines and losses to the company.

5.2. Communication related practices – misleading advertising

Promotion (one of the four Ps of marketing) consists in the use of communication techniques to create a positive image of the firm and its products in order to influence consumer preferences and stimulate the sales of the products. The communication of the firm, whichever form it takes, always has two aims. One is to inform, the other is to persuade. The information side, however, is normally instrumental to persuasion. It is necessary to inform the public about the existence of the product and its characteristics, as well as of the conditions of sale. Nonetheless, in general, the communication does not imply full objectivity. The communication of the firms gives unilateral and subjective information, because it does not confine itself to transmit facts, but aims at influencing attitudes and behaviour. Indeed, according to a widely shared definition, persuasion is the deliberate attempt to influence knowledge, ideas, attitudes, behaviour of others. In business, the effort to elicit favourable changes in the ideas and opinions of others people and to convince them to adopt (or avoid) a certain consumption practice, has animated trading communication since the first commercial exchanges. The essential aspect of advertising, then, is trying to convince the recipient to assume a specific conduct. Therefore, advertising is not a form of impartial and objective information, even when adopting a substantially informative course. In this case, too, its aim is not to serve

the public but to foster the interests of its promoters. This does not mean that advertising cannot and should not be fair and follow criteria related to the moral sense. This is linked to the fact that advertising, as well as the whole communication mix of the firm, (should) result in acquisition of value by the consumers, who by exchanging their money acquire goods that satisfy their needs.

However, persuasion is confused and put together with manipulation or deception. In reality, these occurrences are quite different, and in some respects, antithetical. Manipulative advertising implies a complete disregard of the benefits consumers might attain at the end of the process, and has as exclusive focus the convenience of the emitter (the firm), which is exclusively interested in achieving its objectives, to the detriment of the receivers (the consumers).

A manipulation process usually takes place in five phases, during which the manipulator:

1. Sets its goal;
2. Tries to understand the needs of the target audience, to find a weak point to be exploited to its advantage;
3. Applies the processes of distortion and cancellation, in order to present a false reality to the manipulated;
4. Focuses the manipulated on what interests him;
5. Invites, directly or indirectly, to take an action.

The distortion and cancellation are the most significant steps, as it is thanks to these mechanisms, that the manipulator manages to create a reality able to trap the target audience

Distortion – sometimes called a lie backed by some truthful elements – means the process whereby certain attributes of a product or service are presented exaggeratedly or falsely. For example, claiming that a product has characteristics or performances that it does not actually have, or that it can bring certain advantages, when there is no proof or certainty of this.

Cancellation, instead, takes place when some information, clearly essential for the user of the product or service considered, is hidden.

Deceptiveness, then, can derive either from ambiguous or false statements, or from the lack of information necessary to fully evaluate the offer. It is not necessary to declare something manifestly false to deceive: it is not rare that the single statements, taken literally, are true, but that the message, taken as a whole, is constructed in such a way that the interpretation of consumers leads to a wrong evaluation. An example can be those advertisements, which emphasize in large letters the convenience of an offer, to then specify with almost invisible or ambiguous terms the existence of heavy limitations, which in fact cancel out the advertised advantages.

It is important to stress the difference between persuasion and deception or manipulation; in fact, persuasion is the normal aim of any business communication to consumers and is indisputably legitimate. The manipulation of the consumer through distorted or incomplete communication leads to *misleading advertising*.

According to the European Union Directive 2006/114/EC, *misleading advertising* “means any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor” (European Union, 2006). Any type of communication is misleading if, directly or indirectly, it gives consumers a wrong idea of the product or service offered. Moreover, in order to qualify as misleading advertising it is not necessary that the advertising message has actually caused damage; it is sufficient that the inaccurate information that it communicates is potentially able to alter the decisions of the buyers.

Bait & switch

Bait and switch is a form of (deceitful) advertising whereby a firm – usually a retailer – advertises a tempting deal (bait) but then makes the advertised goods or conditions unattainable when the consumer visits the shop. To a retailer increasing the number of potential customers entering the shop is an important premise for increasing the number of actual buyers. The intention is to encourage the consumer to buy whatever is available in the shop (switch). The client would be offered a different and lower quality brand or the same brand at a higher price, in the anticipation that despite

the disappointment, would accept to buy the inferior product or pay a higher price for the product he was looking for rather than going back empty-handed. This is a fraud and is punishable by law.

However, it is punishable by law only if the offer was clearly deceptive and the consumer had no way to detect the deception. This means that a lot of baiting and switching can go on, provided the seller takes some precaution. Here are some examples.

One of a kind. A durable consumer good (a house appliance, a piece of furniture, a used car) is advertised at a very low cost. The dealer has only one unit available. When the customer comes in that unit is already sold and the dealer would offer other products. The advertisement was technically legal because the dealer had at least one unit on sale (it might have been promised to a client even before the advertisement went out).

While supplies last. Retailers may advertise that together with the sale of a product, an accessory would be given free. For example, buying a printer would qualify for a free ink cartridge, while the supplies of the cartridge last. Most customers will find that there was only a limited supply of the cartridges offered for free and the dealer would try to sell a different one. This would be felt as a sharp practice but would not be illegal if in the advertisement the words “while supplies last” were written somewhere (usually in very small print).

Actual item not pictured. Something is advertised at a low price or as a free add-on to the purchase of an expensive item. The advert shows a very nice picture of a striking and enticing item. A furniture shop advertises that a free television will be given to the buyers of a sitting room fixture; a big HDTV appears in the picture of the sitting room on sale. That is a good inducement and potential customers will go to the shop. However, the television set that the shop gives away with the sitting room is a small and old model. The baited customers had not read the fine print in one of the corners of the advert making clear through the words “actual item not pictured” that the picture did not present the television set that was given for free.

Limited quantity deals. A store may advertise huge discounts for certain items, but only for the first ten customers. Afterwards the price returns to

the usual one. Also in this case, unless in the advert the details of the offer were not explicit, it is not a case of punishable switch and bait.

Dodgy wording. Adverts sometimes may be written in such a way so as to let the reader understand something that is not actually said. If an advert says “all the X brand washing machines up to 80% off”, quite a few people would jump to the conclusion that those washing machines were going to be sold at a huge discount. In fact, it is enough that one single X brand washing machine is sold at 80% discount to make that advert truthful. All the others may be sold at a 5% discount and still meet the requirements of the advert (up to ...).

Bait and switch guiles are not the only ways a firm may use to deceive consumers. The ways that a company may shape its communication so that it misleads the consumers are manifold. A brief series of examples can give an idea of the inventiveness of some advertisers and of their cheekiness.

Cases of misleading advertising

Examples of misleading advertising, punished as such by the various national authorities, are quite numerous.

Food industry (confectionery products)

Wrigley Company (now part of the group Mars Inc.) is one of the most famous makers of chewing gum. In 2008 it launched a new version: its Eclipse gum and mints which had been enhanced with extract of magnolia bark. A study – commissioned by Wrigley itself – found that that extracts from the bark of a magnolia plant could eliminate dental bacteria with high effectiveness. In its advertising campaign for Eclipse, Wrigley boasted that Eclipse, being the only brand containing Magnolia Bark Extract was able effectively to give fresh breath to those who used it, while “most other gums just mask bad breath.” On the front of the packages there was the statement “Natural Germ Killing” and on the back the message “Emerging science indicates that the natural ingredient contained within Eclipse helps kill the germs that cause bad breath with the same great taste you expect from Eclipse”.

Both the competitors (Cadbury Adams USA, in this case) and consumers (through a class action lawsuit) contested the claim. The case first went

to the National Advertising Division (the unit of the Advertising Self-Regulatory Council (ASRC) the self-regulatory body of the American advertising industry charged with monitoring and evaluating truth and accuracy in national advertising), which found against Wrigley. The company appealed against this finding but the National Advertising Review Board again found against it and recommended Wrigley to make radical changes to advertising for its Eclipse Gum, discontinuing the allegation that “most other gums just mask bad breath”. Moreover, it should avoid asserting that it was scientifically proven that the magnolia bark extract in the gum kills or helps kill germs that cause bad breath (Adweek, 2018).

As for the class action lawsuit, Wrigley agreed to settle it by creating a fund containing up to \$7 million to reimburse (up to \$10 each) consumers who bought Eclipse gum or mints that contained the natural germ killing message between June 1, 2008 and the present.

Dalco srl is a small confectionery producer in Northern Italy. It launched a small campaign based on folded leaflets distributed in shops to promote its lollipop called Ciko-Ciko. The lollipop was sold only in pharmacies, making the “Ciko Ciko” lollipop appear as if it were a pharmacological product, while in reality it is a candy, without any medicinal effect and characterized by a high percentage of sugar. The brightly coloured leaflet had on the external page the claim: “NEW for your child! How to take natural extracts and essential oils in a simple way and pleasant?”. Inside the four types of lollipop were described. For each, the compositions of the natural ingredients and the “Medicinal properties of the Plants”, contained in them, were indicated. The terms used were: immune-stimulant, antibacterial, sedative, antispasmodic, calming, anti-inflammatory, anti-emetic, antibiotic, anti-nausea.

The Italian authority (AGCM – Autorità Garante della Concorrenza e del Mercato), found that the advertising was misleading because it suggested that the product, in all its variants, had medicinal properties in the treatment of certain disorders frequent in children. In reality, the message in question appears to be misleading with reference to the prospect of the medicinal effects of the advertised candies, whose characteristics do not justify, moreover, the emphasis of the sale exclusively in pharmacies. The advertised herbal extracts were contained in the product in such a negligible per-

centage that they could not be ascribed to the category of drugs, but rather to that of flavourings. The natural plants of which the brochure boasted the properties, do not give the lollipop pharmacological qualities. The AGCM deemed that the deceptiveness of the message derived precisely from the excessive emphasis given to the medicinal characteristics of the candies, while, precisely because of the high percentage of sugar present in them, it is possible that an exaggerated use of them may contribute to the onset of caries or neglect certain rules of behaviour related to dental hygiene. The company, therefore, was fined for misleading advertising (AGCM, 2016).

Kellogg's (The Kellogg Company) is an American multinational and one of the biggest in the food processing industry worldwide. It is well-known for its lines of breakfast cereals. Its mission statement is "Nourishing families so they can flourish and thrive". In its enthusiasm for supplying products that are good, wholesome and health-giving, it has repeatedly fallen foul of the misleading advertising rules.

In 2010 the advertising campaign for its Rice Crispies brand claimed that these breakfast cereals helped support a child's immunity with "25 percent Daily Value of Antioxidants and Nutrients – Vitamins A, B, C and E". The US Federal Trade Commission (FTC – the federal agency charged with the dual mission of protecting consumers and promoting competition) found the claim misleading because even if it may be true that vitamins help boosting the immune system of a child, there was no scientific proof that in the quantity present in the Rice Crispies, they actually did anything to boost immunity (Federal Trade Commission, 2010). Kellogg's settled this case paying \$2.5 million to affected consumers and donating a similar sum (in Kellogg's products) to charity.

This was the second time in that year that Kellogg's was found misrepresenting the properties of its products. A few months before its nation-wide advertising campaign for another breakfast cereal, Frosted Mini-Wheats, it claimed that "a breakfast of Frosted Mini-Wheats cereal is clinically shown to improve children's attentiveness by nearly 20 percent". The FTC found that the claim was false and violated federal law. The settlement prohibited Kellogg from misrepresenting the results of tests, studies, or research re-

garding any morning or snack food product and also set up the procedure for monitoring compliance¹³. In the end, after a few years (in 2013) Kellogg's settled a class action lawsuit for this claim by setting up a \$4 million fund to refund consumers for up to three boxes of cereals (reimbursement up to \$5 dollar per box) purchased between the end of January and 1st October 2009 (Federal Trade Commission, 2009).

Beauty products industry

Olay is a skin care line brand of Procter & Gamble. In an advertising campaign for its Definity eye cream the testimonial was the former model Twiggy (an English model and actress who was an icon in the 1960s). In the photograph on the ad, accompanying the image of the product with the punch line "Olay is my secret for ... gorgeous eyes", she looked definitely wrinkle-free and most certainly not a 60 years old lady. The claim in the ad was "Because younger-looking eyes never go out of fashion ... [Definity] ... reduces the look of wrinkles and dark circles for brighter, younger-looking eyes." After a brief investigation, it came out that the photo in the ads was retouched. The Advertising Standard Authority (ASA), the British advertising regulator, ruled that the ad was misleading because the retouching of the photo, particularly around the eyes, could give consumers a "misleading impression of the effect the product could achieve"¹⁴.

Smartphone accessories

Breathometer is a company founded to commercialise two appsupported smartphone accessories, breath analysers (breathalysers) claimed to measure accurately consumers' blood alcohol content (BAC).

¹³ The fact that, a few months afterwards, Kellogg's was again found in breach of the misleading advertising provisions and of the FTC instructions just handed out, made the FTC Chairman state: "We expect more from a great American company than making dubious claims – not once, but twice – that its cereals improve children's health ... Next time, Kellogg needs to stop and think twice about the claims it's making before rolling out a new ad campaign, so parents can make the best choices for their children."

¹⁴ P&G said that it was "routine practice to use post-production techniques to correct for lighting and other minor photographic deficiencies before publishing the final shots as part of an advertising campaign". However, it withdrew the ad and substituted it with a similar one without the retouching around the eyes.

Ads for both versions of the Breathometer – Original and Breeze claimed that their accuracy was proven by “government-lab grade testing”. Furthermore, ads for Breeze claimed that it was a “law-enforcement grade product”. However, neither Original nor Breeze were adequately tested for accuracy and, in fact, the producer knew that Breeze regularly understated BAC levels. The FTC found that this was a clear case of misleading advertising. It was particularly reprehensible because people relied on the device “to decide whether it was safe to get behind the wheel,” and “overstating the accuracy of the devices was deceptive – and dangerous” (Federal Trade Commission, 2011). The company was ordered to pay full refunds to consumers who requested them.

5.3. Price related practices

The charging of steep prices is a rather common practice. After all, the maximisation of profits is the main aim of a firm. Of course, this was the initial assumption of classical economists and since their time many other objectives have been assigned to the firm, in particular since the managerial corporation became the most significant type of firm and the appreciation of the fact that owners and managers might have different objectives became a simple observation. Assuming given tastes and technology, the price of a product, as well as the quantity produced, is determined with the exclusive aim of maximising profits. In perfect markets, characterised by perfect competition and perfect information, however, the firm is just one of a large number of producers, which cannot influence the market price of the product. Therefore, the firm is a price taker, because the price is determined by the market forces. Moreover, price tends to the marginal cost and profit is maximised when marginal revenue equals marginal cost ($MR = MC$). This is because marginal profit equals marginal revenue minus marginal cost ($M\pi = MR - MC$)¹⁵. In a perfect market, each firm is in the same conditions as all the others and therefore there is no room for price setting.

¹⁵ This is because marginal profit equals marginal revenue minus marginal cost ($M\pi = MR - MC$). If there is marginal profit, the quantity produced will increase until MR equals MC and there is no additional marginal profit to be made. This is the combination price-quantity that maximises profit.

Markets are not perfect; therefore, there are many occasions for setting a price that is different and higher from that of the competitors. We would not discuss the case of monopolies and oligopolies as explained by economic theory, but to say that, in these cases, pricing power belongs to the firm. In this situation, the price-making firm has little constraint in how high it can price its products or services. Consequently, governments intervene. In the case of a legal or a natural monopoly, like (in the former case) the *Systembolaget* for alcoholic drinks in Sweden, or (in the latter case) energy, or water suppliers in many countries, the government basically sets or caps the prices. In the case of monopolies that are the outcome of the growing predominance of a company in its industry, governments act to break the monopoly through anti-trust legislation. In the case of oligopolies, governments are very careful to make sure that the oligopolistic companies do not establish any form of price-fixing cartel (using anti-trust legislation in this case, too).

However, in normal market conditions, segmentation and differentiation policies offer many opportunities for pricing own products differently than competitors. Indeed, the prevailing situation in most markets is monopolistic competition, where because of differentiation, products are not perfect substitutes and firms have fewer constraints in setting the price. In this situation, sometimes (or often) firms are tempted to raise the price as high as it can go and cross the threshold of unfairness.

There are many ways in which prices can be unfair, and many degrees of unfairness. Sometimes the prices remain within what is allowed by the law but the consumers recognise unfairness, and may react by shunning the product. Sometimes the prices are or become so high that laws against unfair practices come to bear.

Unfair pricing practices may take different forms. The most egregious is pushing prices to exorbitant heights (also called price gouging), but unfair pricing may be the result of bundling goods together, as well as unbundling them. Creative pricing of spare parts, too, is perceived as unfair practice, although it seldom falls foul of consumer protection legislation.

Extortionate prices (price gouging)

Sometimes firms are in a condition to raise the price of their products and take advantage of the situation. As the pursuit of profit is the reason for undertaking a business activity, finding a way to increase profit is perfectly normal and legitimate. However, sometimes the increase in price and the situation that allows it are such that the resulting price is extortionate. Raising prices to such exorbitant levels is also called price gouging. It is the practice of raising prices to unreasonable and unfair level, particularly when a situation of crisis causes a sudden increase of demand and/or a shortage of goods. This is considered unfair and illegal in many countries. However, what exactly is an extortionate level and whether the price rise is unfair are hotly debated. If the pursuit of profit is what firms do, it is silly to complain about them making a profit; moreover, in free market conditions, i.e., no monopolies or price fixing cartels, excessive profits stimulate new entries that will bring prices down again. However, as Keynes said, in the long run we are all dead (Keynes, 2000: 80). Therefore, the sudden increase of price in a case of crisis may have such characteristics to make it unfair and odious in the eyes of the buyer. There are significant differences in the approaches of various countries to what exploitative conduct is, what to consider as price gouging and how to handle it. A widely shared opinion is that putting a cap on “natural” profits – even when they are high – would make firms more reluctant to invest. As such, limiting profits would stifle innovation and reduce the possibility of a better satisfaction of consumers’ needs. For this reason and because it is difficult to identify what “natural” profits are, in many countries excessive pricing does not constitute a violation of law (even competition law). On this subject, there is, at least in appearance, a clear difference between the American and the European approaches. In the US, the anti-trust law, too, accepts that high prices are an important factor for rewarding innovation in a free market system; therefore charging monopoly prices is not unlawful under this law. In EU legislation, any practice by a dominant company that takes advantage of this position is considered abusive and prohibited. The Treaty on the Functioning of the European Union (TFEU) explicitly says that “directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions” is an abuse of

dominant position and, as such, is prohibited¹⁶. The difference is not so big, because, on the one hand, both the European Commission and the European national competition authorities – excluding a few specific instances – did not actively pursue exploitative cases¹⁷. On the other hand, also in many states in the US rising prices beyond a certain limit (most often 10% or 20%) in the aftermath of a disaster is considered price gouging and punished.

Extortionate prices are possible in many activities and not necessarily limited to a crisis situation. Whenever a producer deems that the customer has no choice (as may happen with certain medicines) or knows that most customers are a one-off occasion (as may happen in the accommodation and restoration industries, particularly in touristic spots) it may decide that maximising short term profits would not endanger the prospects of long term ones.

Bundling goods/services

Price bundling is a pricing policy whereby the seller (most often the intermediary) puts together various different goods, services or a combination of both and sells the entire bundle as a single package at a single price. Bundling allows a firm to sell items that are not very popular with consumers and are slow moving (tying capital and warehouse space), linking the sale of more popular items to them. For example, an online wine seller offers a package of twelve bottles at a very good price; of these twelve bottles eight are of very popular varieties and four are less appreciated. A consumer

¹⁶ Article 102 of the TFEU says: “Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States. Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development to the prejudice of consumers; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contract.” Consolidated version of the Treaty on the Functioning of the European Union (2012/C326/01), *Official Journal of the European Union*, (2012).

¹⁷ The intervention by the Commission and European competition authorities requires determining i) “whether the difference between the costs actually incurred and the price actually charged is excessive” and ii) “if the answer to this question is in the affirmative, whether a price has been imposed which is either unfair in itself or when compared to competing products” (De Coninck, 2018).

would not buy four bottles of the latter varieties by themselves but does so attracted by the good price of the bundle. For the consumer, the advantage of bundling is that the bundle is (or should be) cheaper than the individual parts bought separately.

Price bundling is regulated because it may affect competition, falling under the predatory pricing provisions. An integrated firm enjoying strong market power in an upstream sector, by bundling these products with those downstream (where it faces stronger competitors) and charging a price for the bundle low enough to make it impossible for a new entrant to gain a position in the market. In the same way it might squeeze the profits of the stronger downstream competitors could weaken them and gain market power also in the downstream sectors. For the customer the short term gain may be balanced by a long term loss if the bundling firm manages to gain control of the market at all levels of its activity. Bundling has more specific drawbacks for the consumer. They can be the purchase of unnecessary items, when the bundle includes items that the consumer would not buy if they singly were on sale, ending up by paying more than they would have done if they bought only the single item of their interest. To this, lack of price transparency could be added, because the seller is not required to offer the various items of the bundle separately and therefore the customer may find it difficult to estimate the real usefulness and expensiveness of the bundle.

Moreover, price bundling might also tie customers to a supplier, limiting their choice and imposing restrictive conditions for unbundling to switch to better offers for some of the bundled items. This applies chiefly to service suppliers, particularly to utilities. The same supplier may be able to offer gas and electricity, but also telecoms or insurance, or many other services or goods. The consumers might find it difficult to compare prices of different items, and understand how good a bargain the bundle is (or if it is a bargain at all). Seldom are the consumers able to switch services separately. In this case, too, information asymmetry may allow an unfair advantage to the supplier.

Unbundling goods and services

Unbundling is obviously the opposite of bundling. The various components of a package are taken apart and each is charged to the buyer separately. There may be various motives for this policy, all linked to worsening business environment. For example, the basic product is undifferentiated and competition is only on price; or costs are increasing and price cannot be increased correspondingly. Alternatively, some extra had been added to the product when the firm was in a better competitive position and had pricing power, while now the competitors are stronger, pricing power is slipping from the firm and the extras are becoming more expensive. Otherwise, even without defensive reasons, the firm is trying to extract as much value from the customers as possible, sometimes regardless of the expectations of the customers.

The biggest surprise for the buyer comes when it is not obviously apparent that some items could be considered part of a bundle and therefore sold separately. For example, before the appearance of low cost airlines, air travellers expected to bring their suitcase (within a certain weight limit) with them, included in the price of the ticket, as they would do if they were travelling by train, bus or ship.

Low cost airlines introduced the unbundling of air travel and are bringing it to unexpected levels. When also normal airlines started unbundling the transport of the larger baggage from the seat on the airplane, many travellers were initially taken aback.

Spare parts pricing

A spare part or replacement part is a duplicate or replacement component for a machine or other equipment. Spare parts are kept in an inventory and can be bought separately for replacing broken or old parts in a machine. They are interchangeable parts and usually are designed to be easily fitted or replaced.

A company needs to keep an inventory of spare parts for its products because any component of durable goods, machines or pieces of equipment may break down causing the unserviceability of the equipment. Maintaining an inventory of spare parts is expensive and some spares may re-

main in inventory for a long time because seldom required for replacement. However, if the machine in the hands of the customer breaks down, that customer's satisfaction and confidence in the firm becomes inversely proportional to the time required to fix it. It is then essential that, while striving to keep costs down, the firm has enough inventory of any type of spare parts (in particular the so-called capital spares: for those components that have a long operational life and small chance of breaking, would cause a long shutdown of the equipment, if they actually broke) to make sure that it can rapidly intervene to keep the downtime of the machine as short as possible.

For a long time, spare part inventory was seen as an unavoidable cost, to be borne for the sake of being ready to satisfy customers. In the constant effort to keep the cost of the spare parts system from bearing too heavily on the company's performance, companies realized that spare parts may become an important source of revenues. The pricing of spare parts became ever more sophisticated, with the aim of wringing the highest possible price from the spares, in order to maximise the profits this item would accrue to the firm. As the demand for spare parts is inelastic, it is possible to put their price quite high without great risks of backlash. Even if other producers can make the spares (and this is not always the case) the original spare commands a higher price (also because the original producer may link the validity of the warranty of the machine to the use of original spares. In fact, in many cases, although spare parts and after sales services account for a low proportion of revenues, they cover a larger part of the profits.

Therefore, it is not unusual that a consumer owning a car, or another machine, would feel almost ripped off when having to repair it through the substitution of a broken or worn out piece with an original spare.

A special case of using indispensable components as cash cows to the loss leader machine is the so-called tie-in sales. In this case the buyer of the equipment (tying item) needs to buy various complementary items (tied goods), which are essential for using the equipment, exclusively from the same supplier. This applies to industrial equipment but also to consumer goods. In the latter case, the tie-in is not explicit, but the consumer has little choice. For example, a small table top printer is very cheap, but if the consumer wants to

use it, he soon discovers that using it becomes rapidly quite expensive: ink or toner cartridges can cost almost as much as the printer itself.

Cases of price related unfair practices

Extortionate prices

The examples of firms putting an exorbitant price to their offer are countless. Most often, this happens when the firm enjoys some form of localised and/or temporary monopoly that allows it to escape any threat from competition. This is the situation in many airports, where a monopolistic or oligopolistic condition may prevail, since while in the airport, air travellers are captive buyers. A case that elicited the intervention of the national ombudsman (Defensor del Pueblo) is the price of bottled water in Spanish airports.

In 2015, Airports Council International (ACI) – a non-profit organization representing the world's airport operators – recommended that its members make sure there was an adequate supply of bottled water costing no more than €1 per bottle. The Spanish Ombudsman received several complaints about the excessive price of basic products, particularly water, at Spanish airports. Different Spanish airports (but all under the AENA operator that has contracts of concession with various firms in the airports) had different prices for bottled water, but they ranged from €2 to €3 for a 330ml bottle. After the intervention of the Ombudsman, who recommended a lowering of the price, AENA decided to follow the ACI indication and to make sure that the price of a 330ml bottle was € 1 at all the shops in the airports, and that the same price would apply to the 500ml bottles sold by vending machines. To ensure that this resolution would be effective, AENA decided to include it as a condition in the terms of the new tenders to acquire commercial space in the airports.

The tourism industry, too, is prone to raise prices to extortionate levels. Famous touristic places such as Paris or Rome have a higher than average proportion of bars and restaurants with extra high prices. However, quite likely the top position in this ranking – at least in Italy – goes to Venice. This is not only for places in St Mark's Square, where top level restaurants and

cafes present bills that notoriously include a surcharge for seated service and live music, but also more down to earth places, where unwary tourists ended up paying € 1,100 for four steaks and a plate of mixed fried fish. In these cases, the difference between positioning the offer to high level consumer segments and fraud is the presence of a visible and updated price list.

Another area where exorbitant prices reach scandalous heights is in pharmaceutical products. Also in this case, a distinction should be made between extremely high prices for breakthrough medicines for rare diseases and extremely high prices for run-of-the-mill medicines, whose price suddenly increases. Even in the first case, the price may be considered too high. For example, one of the most expensive drugs is Soliris, a medicine for treatment of paroxysmal nocturnal hemoglobinuria, a condition that affects only 8,000 people in the world. It can cost patients up to \$700,000 a year. The research costs involved in developing and bringing to market this type of medicine are extremely high and the number of users is very small. This justifies extremely high prices: without such high prices the costs would not be recovered and the medicine would never be developed. However, in this case the price was felt excessive even taking this into consideration, and in September 2017 Canadian authorities ordered the producer, Alexion Pharmaceuticals, to lower the price, deeming it excessive (The Balance, 2018).

The extraordinary price increase of more common medicines is sharp practice, even if it seldom is prosecuted under the unfair practices rules. But if it does not result in prosecution, this practice attracts at least administrative measures from governments. The practice happens when pharmaceutical firms, often minor ones, buy marketing rights for medicines whose patent has expired and are not any longer interesting to the larger firm that had launched it on the market, and sold it at high price because of patent protection. These new owners would sell the drug under their generic name and be free to devise their own marketing mix for it, including price policy.

A press investigation in Britain in 2016 found that many firms profited from this strategy to increase sharply the price of drugs sold to patients and

paid by the taxpayer through the National Health Service¹⁸. Examples of these extraordinary increases of price are those of an antidepressant, doxepin 50mg tablets, which from 2011 to 2016 rose from £5.71 to £154 a packet (+2597%), and of a strong analgesic, dipipanone 10mg/cyclizine 30mg tablets, which rose from £9.57 to £353.06 a packet (+3588%) in the same period.

Such increases not always result in sanctions. For example, until 2012, Pfizer sold the anti-epileptic drug Epanutin at a price of £2.83 per packet. In that year, it passed on the marketing of this anti-epileptic to the distributor Flynn Pharma, which started selling it as a generic unbranded product, at a price of £67.50 per packet (+2285% in one single jump). In December 2016, the Competition and Markets Authority (CMA) ruled that Pfizer and Flynn Pharma had abused their dominant market position to raise prices and fined them, respectively £84.2million and 5.2 million, ordering them to lower the price. Pfizer appealed against this sentence and the Competition Appeals Tribunal upheld its appeal on the grounds that CMA had been wrong in its market dominance conclusions as it “did not correctly apply the legal test for finding that prices were unfair” (Financial Times, 2018)¹⁹.

Apparently this is a rather common strategy, and price rises in medicines are very common even when they do not hide behind the shift from branded to generic. Moreover, these exorbitant price hikes are very difficult to punish. Large pharmaceutical multinationals, too, appear to have as a business model that of finding the way to hike prices to stratospheric levels. For example, in 2015, Valeant bought the rights to sell various medicines and immediately raised the price: for Nitropress, a drug for lowering

¹⁸ The companies exploited a loophole in the pricing controls of the NHS. Dropping the brand name moves the medicines from a category where producers face a profit cap to another category where the reimbursement price is based on cost information from two designed wholesalers. For many of these medicines, however, although they are generics, the producer is the only or the dominant supplier for those wholesalers. This in effect leaves them “free to set their own prices before the wholesalers add their profit margins. They can face no competition for years because of the limited market for their drugs and the lengthy process involved for rivals seeking a new marketing authorisation from the regulator. Even when there are a small number of competitors, the market is failing to prevent huge price rises in some cases.” (The Times, 2016).

¹⁹ This may give an additional example for the validity of the saying *summum ius, summa iniuria*, already remarked on by Cicero some time ago. (Cicero, 44 B.C.).

blood pressure, the increase was 212%; for Isuprel, a drug for bradycardia, it was 525%; and for Glumetza, it was about 800% (Marketwatch, 2018).

For example, one of the most infamous cases, that of Turing AG (registered in Switzerland but operating in the USA) rising the price of Daraprim, a drug against toxoplasmosis, whose rights it acquired in 2015, from \$13.50 to \$750 a tablet (+5455%). Such an increase caused widespread criticism of the company from many quarters, including the pharmaceutical industry itself, and its CEO, Martin Shkreli, became known as “the most hated man in America”. Shkreli was summoned by a Congressional Committee, where he explained that he raised the price so much because he could do it. The furore caused by the price rise and the flippant attitude caused Mr. Shkreli to resign from his position as CEO of Turing and the firm changed name to Vyera Pharmaceuticals. Mr. Shkreli was afterwards tried for unrelated charges of securities fraud and condemned to seven years in jail. However, despite all this, the price of Darapim is still \$750 a tablet (Arstechnica, 2018).

Bundling goods and service

Sometimes bundling together different products, or products and services, becomes a way to make consumers pay more than they would have planned by making them buy something they would not think of buying. Sometimes, the bundling allows firms to put a higher price than what the customer expects (because of the promotional communication received) by tying the sale of the required product to the purchase of something else, albeit often linked to the product.

This could be seen also as a form of misleading advertisement; however, it is so closely linked to misleading the consumers about the real price of the goods they intend to buy, that fits well with price related sharp practices. An example of this behaviour is when a producer links the sale of consumer durable goods (from a car to a vacuum cleaner) at a special well-advertised price to the use of the hire-purchase facility financed by the in-house financial arm. This is what Toyota (and a few other car makers) did in Italy a few years ago. In 2015, Toyota launched a promotion for some of their models (Aygo and Yaris Hybrid Cool), through their website and by television, offering them at a very convenient price. However, it presented the information about the total costs of these cars and, specifically, about

the methods of payment and the calculation of the price, in an incomplete and ambiguous way.

In particular, Toyota, in indicating the price of cars in promotion, failed to specify at the same time that this “special price” was reserved only for those who signed a loan agreement, for a final price significantly higher than that shown in the advertisement (a “special price” indeed). This obligation, in fact, was made explicit to the consumer only by a note provided in much smaller print on the website and, in an unintelligible way, during the commercials broadcast on television.

The AGCM (the Italian competition authority) examined whether the communication, in Toyota’s website and in their television commercials, allowed the consumer to evaluate the price correctly. It noticed that the website, in the section called “Promotions” listed the commercial offers in progress, referred to the various models. In this section the price of the model and any optional included in it were specified with evident graphic emphasis. Clicking on the link referring to the selected vehicle, the image of the vehicle and the claim appeared in the foreground; only clicking the “Notes” link it was possible to see the financial details indicating the contractual conditions of the promotion (called Pay Per Drive), the loan, the specification of additional costs and the total amount finally due.

The television commercial, too, was obfuscating the real price of the car. In the commercial, the voiceover was saying “[...] automatic climate, leather steering wheel, 15 “wheels, rear view camera and for the first time on a large screen seven inches, multimedia touch system” (these being the additional features included in the promotion price) “[...] present € 9,450 or the price of an Aygo with Pay per Drive [...]”. During the spoken message, the words “[...] 9,450 € FOR ALL” appeared, followed by “THE PRICE OF A AYGO WITH PAY PER DRIVE”, with characters of remarkable graphic evidence, highlighted by the orange colour on a black background. At the same time, at the bottom of the screen, the text concerning the details of the promotion was rendered in a series of extremely reduced lines, containing: “AYGO x-play 3p [the three doors model in promotion] € 9.450. Promotional turnkey price [...] available only in conjunction with the PAY PER DRIVE loan”. In the same small print, the deadline for the promotion was given, as well the number of instalments and an example of the financial plan. From a quite lengthy elucidation, it would

be possible to know that with a down payment of € 3,250, 47 instalments of € 100 and a final instalment of € 3,780 (payable only if the customer wanted to keep the car), the purchase of that model in promotion for € 9,450 would cost € 11,730 (a difference of +24.1%).

The AGCM found that all the promotional communications were unfair. Toyota promoted their models at a price presented as “promotional”; emphasizing that at that price a certain model of car would become the property of the consumer who had purchased it. Therefore, the message was focused on the price promoted and, in the absence of concurrent indications to clarify the scope, suggested to the recipients, contrary to the truth, that the advertised amount will be able to buy the car. AGCM noted that in no message of the campaign was it simultaneously specified that the figure reported in the promotion was reserved exclusively for those who adhered to installment financing, nor was the cost of the loan adequately clarified. In relation to this, the television commercials reported these indications only at the bottom of the page with substantially illegible characters and without the above information being read by the speaker, while the website contained the information, but not at the same time as the advertised price, since only by clicking on the “Notes” link it became available.

The communication was completely unsuitable to properly inform consumers, causing them to misunderstand the price at which it was actually possible to buy the car in promotion. The amount advertised, in fact, was not true. In practice, Toyota ended up proposing in advertising not the selling price, but rather the promotional amount to be paid exclusively through instalments on which to apply the financial charges. Indeed, the advertised figure did not represent the price without financing (which was significantly higher), nor the final price to be paid as a result of the loan (which is also higher than that advertised).

AGCM found that besides the misleading communication methods used by the car maker, a more absorbing reason made the producer’s behaviour in contrast with the obligations of clarity and transparency required of it. This is that price cannot be presented in a fragmented or otherwise confusing way, given its importance in guiding the consumer’s economic behaviour. The final AGCM decision was to fine Toyota for an amount of € 200,000 (AGCM, 2016).

Unbundling goods and service

Cases of separating items that would normally be considered as an integral part of a single product, in order to attract the consumer with a lower price but then adding to it the unbundled items to arrive at a higher final price, are also common.

For example, in 2015, Renault launched on its website a promotion for the Twizy quadricycle, in which its electric-powered vehicle was presented at a list price 'turnkey' of € 6,900 (€ 6,400 with the promotion), but there was no mention that for some models that price did not include the rental of the traction battery. Moreover, the images related to the model "Twizy Life Flex" showed it as equipped with doors, while these were not available at the advertised price. Only by clicking on the item "Specifications" (or on the item "See the detail"), a subsequent page appears stating that the sale price refers to the Twizy Life Flex model, with "rental battery", but without any information on the cost of the rental. Notwithstanding a defensive memory of the producer pointed out that that was only one of the models presented in the site, the AGCM (the Italian competition authority) found that the message was misleading and the practice of keeping the traction battery and the doors separate and to be paid for separately, was an unfair pricing practice. This because those wishing to inquire about the price and characteristics of the aforementioned vehicle would default to a page (so-called "presentation screen") that presents it at the list price of € 6.900. Moreover, the information on the price of the vehicle was accompanied by the image of the car including doors. Such presentation led the consumer to reasonably understand that the Twizy model depicted on the figure could be bought at the mentioned price, optional excluded. Since the battery, particularly in an electric vehicle, cannot be considered an option, but an essential component for the vehicle's operation, this omission is certainly relevant and apt to mislead consumers. The "presentation screen" seemed to present all the essential elements about the characteristics and the price of the "Twizy" quadricycle. By omitting any clarification about the existence of a rental fee of the battery, the promotion could easily convince consumers that the Twizy quadricycle was placed in a price range between 6,400 (of the price in promotion) and 6,900 euros (list price), while in reality a model including a battery starts at € 11,400 in the "Life 45" version.

Moreover, the message, given the images that represented the “Twizy Flex” at the list price of 6,900 euros, suggested that this figure also included the doors, which instead were a payable optional. Also for this reason the message was deemed likely to mislead consumers. Taking into account the fact that for these reasons the message was liable to mislead about the central elements that guide the consumer’s economic behaviour, such as the price (including the rental of the traction battery) and the essential equipment, such as the side doors, the AGCM fined Renault (AGCM, 2017).

Another case is that of a number of car rental companies (among which Avis, Europcar, Hertz) that, for a time in Italy, decided to consider snow chains and snow tyres as an accessory service that must be specifically requested by the customer and for which the payment of an additional sum to the rental price was required. This occurred despite the fact that such devices, in many regions of Italy, between 15 November and 15 April, are mandatory equipment to transit many roads and highways. Moreover, when the vehicle was picked up in that period, the consumer was informed of the rule and asked to equip himself with such devices and pay the relative price, or to assume the risk of traveling with a car that did not comply with the road regulations. It appeared, too, that consumers, at the time of online booking, while they were presented other ancillary services, were not adequately informed on the need to equip themselves with such winter devices.

In January 2014, the AGCM decided to start proceeding against these car rental companies on the grounds that their behaviour was illegal. AGCM judged that the conduct of the companies was to mislead the average consumer regarding several elements (the characteristics of the service, the availability of the required equipment, the risks, the accessories, the suitability for the purpose, the price) causing him to take a decision of a commercial nature that he would not otherwise have taken. Moreover, it deemed that such conduct omitted to give notice of the possible risks to safety, causing consumers to neglect the normal rules of prudence and vigilance, and, lastly, omitted relevant information that the average consumer needs in order to make an informed decision of a commercial nature. In fact, snow chains or winter tyres are an essential part of the car, precisely because they are a safety device required for vehicle traffic at certain times of the year on a variety of roads/motorways.

As a consequence of the information about the start of the proceeding, the car rental companies presented to the AGCM a list of commitments to make amends and comply with the law. In particular, the car rental companies committed to supply the entire fleet of vehicles circulating in the Central-Northern Italy regions with snow chains (in some cases, with snow tyres), during the winter period (15 November – 15 April), included in the indicated price. They also undertook to publish on the company's website, during the period in which the road traffic ordinances are in force during the winter, a message contained in a pop-up illustrating the norm (so-called snow ordinance). This pop-up would appear in the centre of the screen as soon as the location for collection of the car was inserted, and the dates of collection and redelivery, and give the necessary information and warnings.

The AGCM, after making the commitments obligatory and requiring compliance with them within ninety days, suspended the proceeding. It deemed that proposed measures removed the irregularity of the behaviour of the car rental companies. Supplying the entire fleet circulating in the regions of central and northern Italy with snow chains (in some cases, snow tyres), during the winter period (15 November – 15 April), included in the price indicated, allowing the customer to choose to deselect the option with an opt-out mechanism, and informing the customers about the "snow ordinance" solved the issue and determined beneficial effects for consumers (AGCM,2014).

5.4. Unfair commercial practices and contractual terms

The conclusion of contracts between traders and consumers is governed by a detailed legislation. Some rules are provided at the European level, while others are provided by the legislation in force in each Member State of the European Union.

At the European level, in particular, two directives play an important role. These are Directive 93/13/EEC, on unfair terms in consumer contracts, and Directive 2005/29/EC, on unfair business-to-consumer commercial practices. Before examining these two pieces of legislation, it is important to

highlight that, in principle, European directives are legislative instruments that simply set out goals that all Member States must reach, leaving to the national legislatures to enact the necessary measures to achieve these goals. Normally, this process of implementation does not result in the adoption of exactly the same rules in all jurisdictions. However, given that all national legislations derive from the same European source, a quite similar legal framework is in force in all Member States.

Directive 93/13/EEC aims at protecting consumers from unfair contractual terms. In many commercial relations the rights and duties of the parties are governed by standard contractual terms that may put consumers at a disadvantage. In fact, frequently, boilerplate contractual terms have been drawn up solely by traders to their exclusive advantage. Therefore, a first goal pursued by the directive is that of protecting consumers.

In addition to that goal, the removal of unfair terms from consumer contracts is considered desirable by European authorities because it facilitates the establishment of a European internal market, since, by granting similar safeguards to all consumers, the conclusion of cross-border contracts between traders and consumers located in different countries is facilitated.

The adoption of a harmonised legal framework is also important because, if the laws of Member States relating to the terms of contract were different, distortions of competition may arise amongst traders operating in different countries, notably when they conclude contracts with consumers located in other jurisdictions.

In this context, Directive 93/13/EEC approximates the laws, regulations and administrative provisions of the Member States on unfair terms in contracts concluded between traders and consumers. However, this Directive also allows national laws to adopt or retain more stringent provisions to ensure a maximum degree of protection for consumers, at least as long as these rules do not violate European law. If a Member State decides to take advantage of this possibility, it should inform the European Commission who will also make that piece of information available to both consumers and traders on a dedicated website.

According to Directive 93/13/EEC, a consumer is any natural person who is acting for purposes which are outside his or her trade, business or

profession, while a trader (referred to by the directive as a seller or a supplier) is any natural or legal person, who is acting for purposes relating to his or her trade, business or profession, whether publicly or privately owned. These definitions are important, since only the contracts between traders and consumers fall within the scope of the directive.

Particular attention is given to the definition of what is an unfair term. That is a contractual term that, contrary to the requirement of good faith, causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of consumers. In brief, the directive gives emphasis to the principle of good faith and to the imbalances in parties' mutual rights and obligations.

A contractual term is deemed unfair only if it has not been individually negotiated, that is, when it has been drafted in advance and the consumer has not been able to influence the substance of the term, particularly in the context of pre-formulated standard contracts. However, the fact that certain aspects of a contract or specific terms have been individually negotiated does not necessarily exclude the application of the rules on the unfair terms to the rest of a contract, if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract. In any case, if a trader claims that a standard term has been individually negotiated, he will bear the burden of proving that fact.

To determine the unfair nature of a contractual provision, it is also important to consider the goods and services involved, the circumstances of the transaction, and all the other terms and conditions. The assessment of the unfair nature of a term is not related to the definition of the main subject matter of the contract, or to the adequacy of the price and remuneration, as against the services or goods supplied in exchange, at least in so far as these terms are in a plain and intelligible language. Therefore, the actual prices paid for goods or services are not taken into account in this assessment, unless those terms are unclearly drafted.

In any case, the wording of all written contracts must be in a plain and intelligible language, and when there are doubts about the meaning of some terms, they should be interpreted in a manner favourable to consumers.

Directive 93/13/EEC also provides an indicative and non-exhaustive list of terms, which may be regarded as unfair. For example, among these are those terms that have the object or effect of:

- ✓ excluding or limiting the legal liability of a trader in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of the trader; for example, a clause that, in a membership contract of a gym, excludes any liability for the injuries caused by the use of the facilities and equipment of the gym would be considered unfair;
- ✓ inappropriately excluding or limiting the legal rights of a consumer vis-à-vis a trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any contractual obligations; for example, if a tour operator sells a package holiday to a consumer, a clause that limits the consumer's right to compensation to a small fraction of the cost of the package (e.g. 25% of the cost of the package) would be considered unfair;
- ✓ enabling the trader to terminate a contract of indeterminate duration without reasonable notice, except where there are serious grounds for doing so; for example, in a mobile phone contract that does not specify its duration, it would be unfair if the service provider communicated to the consumer that, as provided by the contract, the service will end at the beginning of the week after the notice;
- ✓ automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express the desire not to extend the contract is unreasonably early; for example, in a yearly mobile phone contract, it would be unfair to require a consumer to express the desire not to extend the contract at the latest six months before the date of the automatic renovation of the contract;
- ✓ excluding or hindering the consumers' rights to take legal action or exercise any other legal remedy, particularly by requiring consumers to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to them or imposing on them a burden of proof, which, according to the applica-

ble law, should lie with other parties to the contract; for example, it would be unfair for an international bus operator to include in its contractual terms a clause that requires customers to take legal action exclusively in one Member State.

To ensure the effectiveness of the directive, Member States are required to enforce legislation that makes the unfair terms used in contracts concluded by traders and consumers not binding on consumers and that ensures that contracts will continue to bind the parties if they are capable of continuing in existence without the unfair terms. Furthermore, Member States must ensure that, in the interests of consumers and competitors, adequate and effective legal means are made available to prevent the continued use of unfair terms in contracts concluded between traders and consumers.

Unfair Contractual Terms

Directive 2005/29/EC provides a legal framework on the unfair business-to-consumer commercial practices prohibited in the European Union. In the perspective of European authorities, the development of fair commercial practices is vital for promoting the development of cross-border activities within the internal market.

Before the enactment of this directive, the laws of the Member States on unfair commercial practices were dissimilar, and these differences generated distortions of competition and obstacles to the functioning of the internal market. More precisely, these differences caused uncertainty as to which national rules were applicable to unfair commercial practices, and these uncertainties increased the costs faced by traders in exercising the freedoms granted by the European Union, in particular when traders wished to engage in cross-border marketing, advertising campaigns and sales promotions. Also consumers were uncertain of their rights, and that decreased their confidence in the internal market.

In that context, Directive 2005/29/EC approximates the laws of the Member States on unfair commercial practices that directly harm consumers' economic interests and, thereby, indirectly also harm the economic interests of legitimate competitors. Importantly, this directive does not cover nor affect the national laws on unfair commercial practices that harm only

competitors' economic interests, or that relate to transactions between traders.

The general goal of this Directive is to contribute to the proper functioning of the internal market and to achieve a high level of consumer protection by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices. In essence, Directive 2005/29/EC establishes a single general prohibition on the unfair practices that distort consumers' economic behaviour. In that framework, it also provides some specific rules on misleading and aggressive commercial practices.

The directive applies in the context of the promotion, sale or supply of products by traders to consumers, and it protects consumers before, during and after commercial transactions have taken place, ensuring the same level of protection irrespective of the place of purchase or sale in the European Union. Business-to-consumer commercial practices are those commercial practices adopted by traders that are connected with the promotion, sale or supply of products to consumers. In any case, the directive is without prejudice to national contract laws and, in particular, to the rules on the validity, formation and effect of contracts.

Similarly to what is provided in Directive 93/13/EEC, the directive on unfair commercial practices protects consumers vis-à-vis traders. A trader is defined as any natural or legal person, who, in commercial practices, is acting for purposes relating to his or her trade, business, craft or profession. Likewise, a consumer is defined as an individual, who, in commercial practices, is acting for purposes which are outside his or her trade, business, craft or profession.

According to Directive 2005/29/EC, unfair commercial practices are those that are both (a) contrary to the requirements of professional diligence, and (b) likely to materially distort the economic behaviour of the average consumer. Professional diligence is the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, and it corresponds to the honest market practice or to the general principle of good faith in the trader's field of activity. A material distortion of the economic behaviour of consumers is the use of a commercial practice to appreciably impair the consumers' ability to make informed decisions,

thereby causing them to take transactional decisions that they would not have taken otherwise. Importantly, some consumers enjoy an even higher level of protection due to their particular vulnerability to some practices or products, their age (for example children or the elderly), their naivety or their mental or physical infirmity.

The directive characterises two categories of commercial practices as particularly unfair. These are the misleading practices and the aggressive practices.

A practice is misleading if it contains false or untrue information or is likely to deceive average consumers – even though the information may be correct – and cause them to take transactional decisions they would not have taken otherwise. Such false or deceptive information may regard, for example, (a) the existence or nature of a product, (b) the main characteristics of a product (such as its availability, benefits, risks, composition, geographical origin, results to be expected from its use), (c) the extent of the trader's commitments, (d) the price or the existence of a specific price advantage, (e) the need for service or repair. Commercial practices may also be regarded as misleading if, in their factual context, they may cause average consumers to take decisions that they would not have taken otherwise, in the case they involve, for example, any marketing of a product, which creates confusion with any products, trademarks, trade names, or other distinguishing marks of competitors.

Even omissions may be relevant: a practice is also misleading (a) if material information that is needed by average consumers to take informed transactional decisions is omitted or provided in an unclear, unintelligible, ambiguous or untimely manner, or (b) if traders fail to identify the commercial intent of a practice if not already apparent from the context. However, in both cases, omissions are considered unfair only if they are likely to cause consumers to take commercial decisions that they would not have taken otherwise.

Some misleading practices are particularly dangerous and, for that reason, they are considered unfair in all circumstances. Examples of these blacklisted practices are:

- ✓ displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation;
- ✓ stating or otherwise creating the impression that a product can legally be sold when it cannot; for example, this prohibition is applicable to traders engaged in ticket resale for a particular cultural or sports event, at least when the law bans this practice;
- ✓ presenting rights given to consumers in law as a distinctive feature of the trader's offer; for example, when the law provides for a right of withdrawal from a contract, it would be unfair to present that right as a distinctive term of the trader's offer;
- ✓ establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products;
- ✓ claiming that products are able to facilitate winning in games of chance;
- ✓ falsely claiming that a product is able to cure illnesses, dysfunction or malformations;
- ✓ describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

Aggressive commercial practices are those practices that, by harassment, coercion or undue influence significantly impair the average consumers' freedom of choice and cause them to take transactional decisions they would not have taken otherwise. Undue influence occurs when a position of power in relation to a consumer is exploited, so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the ability of consumers to take informed decisions.

In order to determine if a practice is aggressive, several elements should be taken into account, like, for example, (a) the nature, location and duration of the practice, (b) the possible use of threatening or abusive language or behaviour, (c) the exploitation by traders of any specific circumstance of

such seriousness as to impair consumers' judgment in order to influence their decision with regard to the product, (d) any disproportionate non-contractual condition imposed on consumers wishing to exercise their contractual rights (such as terminating or switching a contract), or (e) any threat to take any action that cannot legally be taken.

Also some aggressive practices are so dangerous that they are considered unfair in all circumstances. Examples of these blacklisted practices are:

- ✓ creating the impression that the consumer cannot leave the premises until a contract is formed;
- ✓ conducting personal visits to the consumer's home, ignoring the consumer's request to leave or not to return, except in circumstances and to the extent justified, under national law to enforce a contractual obligation;
- ✓ making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation;
- ✓ creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either (a) there is no prize or other equivalent benefit, or (b) taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

Finally, with regard to its enforcement, Directive 2005/29/EC requires Member States to provide adequate and effective means to combat unfair commercial practices in the interest of consumers. However, the directive also leaves a certain degree of freedom to the national laws to determine which specific legal tools should be made available in each jurisdiction to achieve that goal.

5.5. Internet and e-commerce practices

In a quarter of century, the Internet has spread everywhere and has become the everyday everything tools of a large and growing proportion of humanity²⁰. It has become an everyday tool of business, too.

People can surf the net anytime, while doing almost anything. They can look for information on products or services, compare their characteristics, check and compare their price, buy them online. Internet, therefore, had a huge impact on firms' relationships with potential customers. Through Internet, firms can show their products; can let customers adjust them to their taste, allowing full customization of the product; can even involve them in the development and fine tuning of new products. Through Internet, firms can inform their customers about the price of their products and, sometimes, adjust this price to the characteristics of the single enquirer; can reach their customers anywhere in the world, at any time, sidestepping most of the issues related to the distribution policy. Through Internet, firms can communicate on a one-to-one basis to all and each of their customers, personalising their communication and their promotion. Through Internet, inevitably, firms can deploy sharp practices that can affect their customers negatively, touching any of the aspects discussed up to now, plus some other ways that are peculiar of activities in Internet.

The use of the Internet and, in particular, e-commerce activities has considerable repercussions for consumer protection. Faulty or harmful goods may be bought online, and unfair or criminal commercial practices can flourish through the net.

Consumers use the Internet for a variety of purposes, the most common of which is *searching for information* of any type. An important activity, that often is the conclusion of the search, is *shopping* online. Directly related to shopping is paying online for the goods purchased; not all the purchases online imply that the payment has to be done online, too, but a large and

²⁰ According to the International Telecommunications Union (ITU,) between 2000 and 2017, Internet penetration has increased almost seven-fold from 6.5% to 48% of the global population (and to 70.6% of the world's youths – people aged 15–24). These figures also indicate that about 3.8 billion people, mostly in the developing world, remain offline therefore, there is a lot of growth potential in internet-based activities (ITU, 2017).

growing proportion is indeed done online, largely supplanting bank transfers and cash on delivery (COD) as a means of settling purchases made online. If shopping and payment online is becoming ever more widespread and involving an increased number of people, online leisure activities are even more widespread. *Playing games* online is widespread and feeds a fast growing industry: spending on mobile gaming only is expected to reach 70 billion US dollars in 2018. *Listening to music* and *watching videos*, too, is a frequent activity of Internet users, activity not much constrained by the growing official restriction to streaming and downloading services. For users of the Internet, be they individual consumers or firms, an additional area of exponential growth is the use of *cloud services*, thereby they can access software when they need to use it, rather than buying the license to store it in their own PC, and store their files to access their content when they need them, wherever they are. Consumers already use many cloud services and are expected to increase that use even more. Services available in the cloud range from accessing and using software on a 'pay as you go' system to web-based email, from cloud storage to social media. Indeed, finally, but certainly not least, the exponential growth of the use of *social media* has created a huge pool of people frequently connected to the net.

All these activities may be a source of unfair practices that damage consumers. For example, when using *search engines* (a very highly concentrated sector) the consumer might not be sure of how the search data would be used. The consumers cannot know whether they will be exposed to possibly illegal or damaging search results, while they might be displeased by the fact that the data gleaned from the search process could be sold for commercial purposes (and might be afraid they could be used for law enforcement, particularly in countries where the government does not like its citizens to be too curious). When *shopping online*, consumers might not know who exactly is operating the online store and whether this operator is responsible for the satisfactory conclusion of the transaction. Moreover, if things go wrong, not always the online operator is willing to redress the problem. Many consumers are not sure of the trustworthiness of the online payment systems, being worried that their bank account or credit card details could be stolen and their accounts fraudulently depleted. Free download *games* may end up to be anything but free, requiring payment for

special features (that often are necessary to play a proper game). This problem of unexpected costs appearing after a “free” download is also quite relevant for any apps or app-based activity. Streaming or downloading *video* and *music* may be blocked or illegal in certain countries; many consumers then use illegal services that are available on the Internet, or proxy services, risking punitive measures. When using *cloud services*, consumers might have doubts about the safety of the documents (be they files, photos, or whatever) left on the cloud, the possibility of transferring them to another provider and the risk of the service becoming unavailable when most needed. When using *social media*, consumers may find that their privacy is not assured, or that they are locked-in with their operator, finding it very difficult to transfer their personal data from one social network to another. Moreover, the exposure to negative user generated content, maliciously posted by hostile persons may reach the level of cyber bullying and cause tragic deeds.

Several issues affect the consumers as users of the Internet and the services available on the net, and these, therefore, must be addressed in order to ensure that consumers are aware of the risks and are protected from them. These issues are: privacy, security, contracts and payments, and harmful or illegal content.

Privacy

Technological development and multiplied uses of Internet have increased the amount of data available to the providers of net services and the capacity to analyse them and use them for various purposes. Consumers may feel that they are not in control of their privacy. In general, they may not know what personal information is gathered about them, who is collecting it, how it is used and to whom it is sold and for what purposes that buyer bought it. Indeed, quite often when accessing certain services, consumers are tracked – for personalised advertising targeting – without their consent. More often than not, because of the policy of the service provider and depending on which jurisdiction consumers live in, they have no other choice but to accept long, complex and not always well understandable privacy terms, or not to use the service at all. The rules enacted by the EU countries in 2018 have reinforced online privacy rights, for example, by requiring that the consumer’s consent be given explicitly rather than as-

sumed. The same rules have assured the portability of personal data, as well as the right to require cancellation of personal data stored by the Internet operator.

Security

Privacy is often twinned with security. The users of the Internet would worry about not only their privacy but also, even more, about the security of their data. There are many areas where a security lapse may cause harm to the consumer. Most important for the consumer, is identity theft that can be the extreme result of a more common threat, the unauthorised access to (and following use of) personal data. Moreover, the risk of fraud – often linked to the payment process – is also a source of worry for the consumer.

The numerous recent instances of cyber-attacks and hacking of sensitive databases, show that these are not idle worries. It is scant help for the consumers, knowing that law that criminalizes attacks against information systems, such as the interception of computer data, or the spread of malicious software into networks and computers are in place in many countries. The feeling of insecurity is not helped by the fact that only in few jurisdictions, companies – but only telecommunication companies – are required to notify security breaches. Moreover, the communication goes to national regulators and less often to the consumer themselves. However, in most jurisdictions, most companies are not obliged to do so, nor are many operators obliged to implement methods to deal with security risks. The increased awareness of the risks linked to cyber security is slowly convincing governments to introduce stricter regulations, and companies to adopt cyber security measures. The consumers, too, should be careful and aware of security risks linked to their behaviour. Access to sensitive personal data can be caused not only by weak defences of the firms that provide Internet-based services, but also by carelessness of the consumers in relation to the protection of those data. Phishing is a common approach used by fraudsters to enter in possession of private data²¹; consumers should be

²¹ Phishing emails are emails apparently sent by an organisation (usually a bank or other financial or governmental institution) that already has such data and asks for verification. Usually the mail leads the recipients to visit a website where they are asked to update personal information, such as passwords, credit card details, bank account numbers, thereby revealing extremely sensitive personal data.

aware of this threat and avoid falling for the ruses used in those direct attacks of fraudsters.

An even more serious security threat is linked to the misuse of social media by other users. In particular, online frauds are extremely common (mostly through e-mail). Although they can be easily spotted, they often snare gullible or rapacious targeted individuals. Much more dangerous are those actions that prey on psychologically unstable individuals, who may be induced to act in a dangerous or self-harming way by psychological pressure. A further danger is that of sexual predators, who through social media lure their victims. Although only a minute proportion of Internet users belong to these types of villains and a similar small proportion may become their victim, this danger must be always kept present by Internet users.

Contracts and payments

Many are the potential risks that consumers take when deciding to pay online. Problems with security may materialize at two different stages of the payment process. On the one hand, during the transfer of payment there are questions of safety of sensitive data information over the net, of tampering with the instruments of payment (cards) by the receiver of payment, as well as the certainty of a correct conclusion of the transaction. On the other hand, there are questions about the storage safety of payment data, which should be kept secure and inaccessible to third parties. There is the need for assuring protection against these risks. Indeed, already at the turn of the century the OECD, in its recommendations about consumer protection in e-commerce, warned that “businesses should manage digital security risk and implement security measures for reducing or mitigating adverse effects relating to consumer participation in e-commerce” (OECD, 1999: 49). It also specified: “security measures...commensurate with payment related risks, including those resulting from unauthorized access or use of personal data, fraud and identity theft”. and “Such protection should include regulatory or industry-led limitations on consumer liability for unauthorized or fraudulent charges, as well as chargeback mechanisms, when appropriate” (OECD, 1999: 40, 41).

The risk for the consumer is that a breach in the security system of the payment providers may expose them to theft through payments made by

those who through that breach could access the sensitive data of the bank or credit card account. Therefore, payment providers should not only timely notify consumers of the breach and the increased risk, but also implement opportune redress mechanisms should their data be compromised or when they suffer financial losses because of security breaches²².

Additional problems are linked to unfair and fraudulent practices adopted by some payment providers that may charge unannounced commissions, or may arbitrarily impose sanctions on grounds of unilaterally defined misbehaviour of the consumer. Sometimes the online payments may originate unexpectedly disproportionate bank charges or financial penalties for failure to comply with some conditions. These can be implemented directly through electronic debiting, and if unjustly penalized, the consumer will find it difficult to have redress. Higher risks present the so-called 'technical protection measures', non-financial penalties that might damage the functionality of the consumer's computer (UNCTAD, 2016, 98).

Further typology of these practices is that of not fulfilling, or fulfilling partially, the order received online. It is the case of short-lived firms, set up for the specific purpose of starting to sell a certain range of products online, which after operating for some time in a normal way, selling and delivering the products, stop fulfilling the orders, and after a while, disappear. Otherwise, some firms may equivocate on the content of the order received and supply cheaper items instead of those ordered.

Moreover, the global nature of e-commerce creates objective difficulties in relation to which jurisdiction would be competent for defining the requirements for writing, carrying out, and enforcing contracts. This was recognised since the beginning of the e-commerce phenomenon and still needs to be pointed out as the 2016 OECD recommendations repeat: "consumers who participate in e-commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce" (OECD, 2016). However, such a strong statement could not be acted upon (it was present, *verbatim*, also in the 1999 recommendations) because of the complex interaction of differ-

²² For example, the EU has reduced to € 50.00 the consumer's liability in case of use of their stolen banking details.

ent jurisdictions on e-commerce. It is not yet defined whose laws apply in the case of a provider with a legal domicile in one country, its servers in another and the customer in a third country. Dishonest providers can play successfully on these ambiguities.

In addition, another area where the security of Internet users may be threatened has recently emerged. Normally consumer protection in e-commerce means protecting consumers from unfair or predatory practices of the firms that are selling their products on the Internet (i.e., B2C, business to consumer transactions). However, the Internet has facilitated the growth of transactions between two consumers. In the last years, the phenomenon of the “sharing economy” has dramatically increased its weight²³. Therefore C2C transactions have become widespread and added further complexity to the security issues. This increased complexity of the security issue is compounded by the expansion of the phenomenon of the peer-to-peer loans. All this multiplies the risks linked to the security of transactions in Internet.

Harmful or illegal content

An additional problem for consumers using Internet is the possibility of unwittingly running into illegal or harmful content. This may happen through the search results or while on social media. The dangers associated to harmful content are particularly serious when minors are involved. In their case, content that can be acceptable for an adult may cause serious harm. This, besides the instances mentioned above when talking about security, includes inappropriate content that appears in the search results. This can be text, photos or drawings and videos with sexually explicit, violent or gruesome subjects. Many operators have adopted policies to address this problem, such as offering tools for parental control, but often these require the active participation of parents, who need to activate these controls (and

²³ Internet facilitated transactions between consumers are not a novelty. The successful precursor in this field was e-Bay, established in 1995. However in the 2010s e-commerce platforms multiplied and some have had great success, such as AirBnB, BlaBlaCar. For an interesting overview of the evolution of the platforms and their role in e-commerce see Journal of European Consumer and Market Law, special issue.

even at present writing, many parents cannot be considered as digitally literate and able to do so).

Illegal content is present on the net. Most countries have activated mechanisms to deal with it. However, this is easier said than done. On the one hand, at least in countries where freedom of expression is protected by law, the balance between the need to fight illegal activities on the net and the protection of free expression is not easy to strike. Numerous are the cases when authorities are accused of overreaching and attempting to curb freedom or controlling the population. This problem seldom arises in countries, such as China, that make of the control of what their citizens do and say on the net an element of their internal policy. On the other hand, while certain activities, such as online piracy or online child pornography are clearly identifiable as illegal activities anywhere, in other cases, what is legal in one country might be illegal in another one. In this case, the consumer may end up unwittingly violating the national law.

Cases of Internet and e-commerce unfair practices

Privacy

Blue Global Media, LLC is a lead generation²⁴ firm, i.e. which assembles targeted databases to sell to firms interested in contacting potential clients. It operated dozens of websites, under various names, such as 100dayloans.com and clickloans.net. These offered a variety of services to consumers looking for loans. The selling point was that, in exchange for a small commission receivable when the loan was given, it would search its network of more than one hundred lenders, connecting each applicant to the lender that would offer the best terms. In order to be able to carry out this activity, Blue Global Media asked the applicants to supply sensitive information, such as Social Security numbers and bank account numbers, assuring that such information would be given only to the trusted lending

²⁴ Lead generation is a marketing action that allows the firm to generate a list of potential customers interested in its products or services. This operation consists in finding interested customers, getting contacts from the person (lead) and building a database that will be used by the sales department. To generate new contacts for future customers, all the various marketing strategies can be used. The interested firm itself can implement lead generation, or can buy the leads from a firm specialised in building such databases. Quite often, however, such databases are assembled through questionable methods.

partner of the network. However, the Federal Trade Commission found that the firm not only did not match loan applications to the terms or loan rates of the lenders and in practice only managed to supply just a few loans, but also “sold the loan applications to the first buyer willing to pay for them”, without putting any condition about how the information would be used. Moreover, these personal data were sold without the consumers’ knowledge or consent.

The firm settled the charges out of court, accepting the order of the FTC to stop the misrepresentation of their capacity to assist in obtaining loans on favourable terms, to protect and secure personal information collected from consumers, to verify the identity of businesses to which they sell this sensitive information, and to obtain consumers’ express consent before disclosing it. FTC suspended the final part of the settlement, i.e., “a judgment for more than \$104 million, which represents the revenue defendants obtained by selling consumers’ loan applications as leads”, because of Blue Global Media’s inability to pay (Federal Trade Commission, 2017).

Contracts and payments

Debt collection schemes are a rich source of sharp practices, which sometimes are exposed and punished.

SQ Capital, LLC, is a US company that operates in this industry. In September 2017, a US district court determined (through a default judgement, since the defendants did not show at the trial) that this company and its CEO, who also controlled JT Holdings, INC. and HPD LLC, both operating in the same field of activity were guilty of unfair practices. From 2014 to 2016, these companies marketed, distributed and sold counterfeit debt portfolios that claimed to represent loans made by various loan providers, such as 500fastcash.com and Castle Peak. The point of marketing those loan portfolios was that the persons purportedly listed in those portfolios owed unpaid payday loan debts, and who bought the portfolios had the right to collect those debts. By selling the portfolios to debt collectors, they enabled them possibly to mislead consumers regarding their debt obligations, causing substantial injury to the latter. The court found that the scheme to sell “counterfeit debt portfolios was deliberate, and caused serious and widespread harm. It involved elaborate planning, the creation of false documents, and multiple

sales transactions to several buyers over a three-year period.” In that period the unlawful gain accruing to the three companies and, ultimately, to their owner and director amounted to more than 4 million US dollars. The defendants were intimidated to stop their practice and pay a fine equal to the amount unlawfully gained (USDC, 22017).

From the consumers’ point of view, the problem with fake debt portfolios is that the debt collecting company that buys them wants to collect those debts they bought. Some consumers (the most vulnerable ones), upon receiving a debt payment injunction would pay up without complaint, particularly if the amount is not high. Others would complain that either they have already paid them back or had never asked for a loan to the loan provider which purportedly was the originator of the debt. Normally, when the debt collecting company in its turn complains to the loan provider or the broker that sold the portfolio, upon confirmation of the inexistence of the debt would ask repayment from the broker (for the discounted amount at which it bought the debt) and cancel the debt. Sometimes, however, the debt collecting company would ignore these complaints and keep asking for the repayment.

In a case somehow connected with the previous one, the companies ACDI Group LLC, and Solution to Portfolios LLC (ACDI) bought from SQ Capital LLC, through UDH a debt portfolio broker, a portfolio of payday loans. As seen in the previous case, the debt portfolio, purportedly of loans made by 500FastCash, sold by SQ Capital LLC was counterfeited. After the purchase of the debts portfolio, ACDI began contacting borrowers to start collecting on the debts. In many cases, the people contacted complained that either they had never contracted a debt with 500FastCash or that they did not have an outstanding balance. When the ACDI reported the complaints to UDH, the broker returned the ACDI money and told it to stop collecting on the phony debts. However, ACDI kept collecting debts from consumers for at least seven more months. In total ACDI has collected “at least thirty thousand dollars in payments for alleged debts that consumers do not owe or that ... [ACDI has] ... no authority to collect” (USDC, 2017). The court accepted the complaint and authorised to file it in June 2017. At the moment of writing (July 2018) there is no news about this case.

Conclusions

To conclude it should underline that in modern times the restriction of competition was most famously disciplined by the Sherman Act of 1890, which was at the basis of the US antitrust legislation and led to the first most famous dismantlement of a business empire, that of the Standard Oil in 1911²⁵. For long time and still nowadays, the unfair practices that received much attention were the ones relative to stifling the competition²⁶. The consumer was taken into consideration only insofar as the anti-competitive behaviour of a firm was deemed to harm the interest of consumers. This was a reasonable attitude when taking into consideration the assumption of perfect markets. In a market where there is perfect competition, with many buyers and many sellers, and the law of supply and demand makes everybody price takers; and where there is perfect information, and buyers and sellers have full knowledge of the specific product they are exchanging, and any comparison between suppliers is irrelevant because products are undifferentiated, the market itself contrives the protection of the consumer. Therefore, all that is needed to protect the interests of the consumers is to make sure that full and fair competition among producers is assured.

However, in recent times (over the last few decades), sharp practices have received much higher attention and elicited stronger and more widespread reaction. At a conceptual level, the observation that perfect markets do not exist and reality is much more complex than envisaged by classical economists became the new orthodoxy. Not only perfect competition does not exist (at the least because seldom products are undifferentiated), in which case laws against anti-competitive behaviour might be sufficient to redress the situation, but also the other condition for perfect markets is in-

²⁵ In fact, the first modern antitrust law was the *Act for the Prevention and Suppression of Combinations formed in restraint of Trade*, enacted in Canada in 1889. Rockefeller's oil empire was not the only target of (belated: it took 21 years from the enactment of the Sherman Act) American antitrust action: in the same day when the Standard Oil was broken up by the courts, the same happened to the American Tobacco Company (the Tobacco Trust).

²⁶ Another very famous case was the breaking up of the "Bell system", the splitting of AT&T Corporation, which had an effective monopoly on telephonic communication in the USA, into seven independent "baby Bells" (officially known as Regional Operating Bell Companies), plus the rump of AT&T (AT&T Long lines). The break up was mandated in 1982 and was effective on 1st January 1984.

existent. In the real market, there is no instance of perfect information. Not only all actors have incomplete information but, more importantly, there is a clear information asymmetry between sellers and buyers. The former have complete information about what they are selling, the latter know very little. Moreover, the perfectly rational individuals, who as consumers maximise their satisfaction by making rational, well considered choices also do not exist. Not only because lacking full information – more, knowing much less than the counterpart – it is quite difficult to make well considered choices, but also because the rational individual making rational choices does not exist (Simon, 1972)²⁷. The consequence of limited rationality in decision-making and information asymmetry in favour of the seller makes the consumer easily the object of unfair commercial practices, and these cannot be checked by simply anti-competitive rules. The invisible hand claimed by Smith as the unmatched problem-solver works most imperfectly whenever information is imperfect and markets incomplete, i.e., always in the real world (Stiglitz, 2002).

Consumer protection addresses the disparities of the relationship between consumer and seller, caused by a skewed distribution of knowledge and resources and, consequently, of bargaining power. Various reasons are advanced to explain the intervention of the state through specific consumer protection legislation (UNCTAD, 2016). Firstly, an important point is – as always – *economic efficiency*. Although in an ideal market economy suppliers will “engage in fair competition; provide consumers with full information on their products; observe all laws regarding safety and quality standards; and compensate consumers if problems arise with their products or services.”²⁸, “it is impossible to envisage an economy where there is no possibility of abuse”. Therefore, explicit laws are necessary “to ensure that suppliers behave responsibly and that aggrieved consumers have ac-

²⁷ The concept of *bounded rationality* was introduced by H. Simon in 1957. He maintained that, when making decisions, people cannot be perfectly rational. Their rationality is limited by their incomplete knowledge of all the details of the matter, as well as by its complexity and the time available for the decision.

²⁸ And also, on “the demand side, consumers will act reasonably and purchase only products of the required quality at the best price, thereby weeding out any uncompetitive suppliers ... should be well informed about a product or service before making a purchase. ... should be knowledgeable remedies available to them so that they can actively pursue these rights (UNCTAD, 2016: 2).

cess to remedies.” (UNCTAD, 2016: 2). From this point of view, consumer protection laws and competition laws are the two prongs of the instrument that gives a helping hand to the ‘invisible hand’ to make sure that the market system works well and assures the efficiency of the market economy.

Secondly, consumer protection legislation aims at *protecting the individual rights* of the consumers making sure that they receive considerate treatment and their dignity is safeguarded. Moreover, such legislation furthers *equity and social justice* by trying to achieve “bargaining equality between consumer and producer interests ... [and to alleviate] ... the problems of those who are particularly vulnerable in the market place such as children, the poor and illiterate, and those with particular needs such as persons with disabilities.” (UNCTAD, 2016: 3).

Thirdly, mention is made to the aim to promote *distributive justice*, implementing policies aimed at redistribution of wealth and guaranteeing “access to basic goods and services”. Fourthly, also a *right to development* is included among the reasons that justify legislation on consumer protection. These two motivations and the latter in particular, are mentioned in the United Nations General Assembly resolutions and the United Nations Guidelines for Consumer Protection, which states that development and consumer protection are complementary. These extensions of the meaning and objectives of consumer protection are by no means shared by scholars and remain a statement of intentions not much implemented in the legislation of the member states.

Consumer awareness relevance and strategies – implications on business

Ville-Pekka Mäkeläinen

Introduction

Markets are changing and consumer behavior has been changing as well during recent years dramatically. This change is most likely continuing also in the future. Consumers are more aware of their rights and emphasize ethical behavior of companies also when doing buying decisions. Consumers also behave accordingly. On the other hand, more and more is expected from corporations in the area of social responsibility and in the area of sustainability. Business has become very transparent and for that reason companies have also invested a lot in this area. Obeying law is not enough nowadays. This is what we have learned through many business cases recently. Obeying the law does not mean that you would act ethically or as a well behaving citizen in the society. Dr. Thomas Kremer, a board member of Deutsche Telekom AG, was also discussing about these phenomena in an article (Kremer, 2016). If you do not respect consumer rights in your company, you might face soon problems because of your unethical actions and not behaving as a responsible company.

Firms should keep in mind that all bidders in the market should assume direct responsibility for the following (Roman & Manolica, 2014: 1057–1058):

- ✓ supply and marketing of certified and quality tested services and products only, which do not cause big problems or risks for consumers in the areas of life, health or safety;

- ✓ sale of products with exceeded, fake or counterfeited expiry date;
- ✓ compliance with hygienic and sanitary conditions in production, transportation, handling, storage and sale of the products;
- ✓ granting of guarantees, accurate information on prices and compensation for damage if required;
- ✓ assuming self-control over the moral behavior in relation to direct subordinates and to important interest groups of the company.

Blackwell et al. emphasize that consumer rights are absolute, inviolable and nonnegotiable. For example, outright deception, poor product quality, nonresponse to legitimate complaints and pollution should be categorized as a violation of consumer's legitimate rights. There has been a shift in consciousness of consumers, leading to urgent demands for moral and ethical behavior in business. Manufacturers and retailers are increasingly faced with protests when their actions are not meeting ethical standards widely accepted by consumers (Blackwell, Miniard, Engel, 2001: 27).

In an article about LOHAS (Lifestyles of Health and Sustainability) consumers in *Ekonomi* magazine, it is stated that due to the rapid transfer of information globally the business field has become also more transparent. Due to this development every third Finn's decision making is guided by ethical and ecological basis while making decisions. This example also shows the growing importance of ethical issues for company management (Mäki, 2017).

There are more and more cases where consumers face problems internationally with consumer rights. Due to these kinds of reasons consumer awareness issues become more and more important in the future. The reason for increasing amount of international consumer rights cases is e.g. in growing international tourism and e-business.

Companies should, according to the marketing theories, behave responsibly with respect to consumer awareness issues and by active measures they should try to avoid problems in this area and help customers in solving problems or challenges they might face. Companies have more to win through active participation in these types of activities than trying to avoid issues related to consumer rights especially in international context. Actual-

ly, research findings indicate that firms with clear and visionary standards of right and wrong are the ones earning the highest profits and having the best performing stock (Blackwell, Miniard, Engel, 2001: 28).

In cases where manufacturer of the product and client are located in the same country the procedure to correct problems related to the transactions are easier to deal with. If the supplier and the client are located in a different country the client might need support in clarifying the process of correcting the problems discussed above. From consumers' point of view the more challenging cases related to consumer rights take place in an international environment. Companies with high level of ethics should try to find solutions to support consumers in these kinds of cases.

Solomon et al. discuss about a rising phenomenon 'political consumer' – a consumer who expresses their political and ethical viewpoints in selection of products from companies which behave ethically. On the other hand these consumers avoid doing business with companies, which behave unethically. Solomon et al. continue that ethical behavior is also good for business in the long run, since consumers' trust and satisfaction translates into a long-term loyalty (Solomon, et. al., 2008: 17). Consumers are also more and more looking for social or environmental information about companies. Consumers use this information e.g. to decide from which companies to buy from, invest in and work for (Kotler & Keller, 2016: 688).

In addition to individual consumer's rising level of awareness of their rights etc., companies have also larger organized groups of consumers as interest groups. D. Gilbert called this consumerism. Consumerism has as an objective protection of all consumers from organizations with which they could have a relationship. As a movement it tries to influence the policies and behavior of organizations and groups to minimize the likelihood of problems or potential problems for individuals, society or the environment. They seem to have a belief that businesses are more likely to maximize their profits than think about issues of public interest. In recent years these kinds of consumer groups have been more and more active (Gilbert, 2003: 374).

6.1. Consumer awareness – related concepts and changing business environment

There are many concepts which are synonyms of consumer awareness or which are very close to this concept. First of all is customer awareness. The major difference is related to the type of client when comparing the terms customer and a consumer. Customer is a broader concept compared to a consumer, consumer refers to individual consumers.

Another concept related to consumer awareness is consumerism which was already introduced as a concept in the previous subchapter. Oxford dictionary defines consumerism as ‘The protection or promotion of the interests of consumers’ (“Oxford living dictionaries”).

Another term which is closely connected to consumer awareness is consumer rights. Consumer rights refer to the legal aspects of customer protection. In the European Union, consumer rights are defined from legal perspective as “Consumer rights and law”:

- ✓ fair treatment,
- ✓ products which meet acceptable standards,
- ✓ a right of redress if something goes wrong.

Consumer rights can be defined in different ways and internationally definitions for consumer rights could vary quite a lot. This whole book discusses consumer awareness issues in a European context. For this reason consumer rights are also being discussed within the same context.

When you think about marketing strategies related to consumer awareness you need to think as well larger concepts related to connecting with customers from ethical perspective. Those concepts are: business ethics and corporate social responsibility. Corporate social responsibility is discussed more in detail in the next subchapter. ‘Business ethics can thus be understood as the study of the ethical dimensions of productive organizations and commercial activities. This includes ethical analyses of the production, distribution, marketing, sale, and consumption of goods and services’ (“Stanford Encyclopedia of Philosophy”). It covers moral questions about doing business. Business ethics has different definitions when talking

about different areas of business functions. Parsons and Maclaran discuss about marketing ethics. Gaski's and Murphy's definitions can be found from this book. John Gaski defines marketing ethics as 'standards of conduct and moral judgement applied to marketing practice'. Patrick Murphy et al. also include institutions themselves in the definition ... and define marketing ethics as 'the systematic study of how moral standards are applied to marketing decisions, behaviors and institutions'. Parsons and Maclaran continue about marketing ethics: ethical standards typically vary from one institution to another and from one culture to the next one. For this reason a universal application of a set of ethical standards is problematic (Parsons & Maclaran, 2009: 122).

Business ethics and corporate social responsibility deal with many aspects of doing business from ethical perspective and both of those concepts are also very broad covering different viewpoints of ethical issues from business perspective. From company perspective ethical issues are internal issues, how does the company react to the events it faces on the markets?

Brinkmann and Peattie point out a very interesting issue about business ethics in their article about Consumer Ethics Research. As they mention in their article business ethics studies concentrate on firms and their behavior. Usually also negative examples are being discussed. As they point out in the article and as you are able to find out from marketing theory discussion in this chapter, often there is some sort of relationship between customers and suppliers. So there are ethical issues related to customers' behavior as well (Brinkmann & Peattie, 2008: 22). In addition to that, an important issue has to be also mentioned about ethics related to this chapter. There is an assumption in this text that firms are assumed to perform ethically at a high level related to consumer awareness and consumer rights.

On the other hand you need to think about larger external factors influencing company's strategies related to consumer awareness. When we discuss about the formation of these strategies internally in the company we discuss externally about consumer behavior. How does consumers' behavior change in the issues discussed and how those changes should be taken into consideration by companies in their strategies?

Such a factor influences the need to pay attention to consumer awareness in the increasing amount of traveling and tourism. In Europe, tourism has been growing about 3 % on an annual basis between years 2005 and 2014 (Tourism and the European Union, 2015: 8).

Authorities have also paid more and more attention to consumer awareness. When consumers buy more and more goods and services online, the challenges dealing with consumer awareness issues and consumer rights have become more and more common. European Union has shown interest to make the EU's internal digital market more efficient. The benefits created through efficiencies in digital markets are expected to be about 415 billion euros on an annual basis ("Shaping the Digital Single Market"). When digital trading increases the issues faced in the area of consumer awareness will also increase.

These are among the trends, which increase the amount of purchases done one way or another from another country. In case of product defects, malfunctions etc. the sellers of the products and services have to deal with consumer awareness issues and consumer rights more and more. From company's perspective it would pay off to be proactive, being prepared to face consumer awareness issues e.g. due to the trends discussed above. E.g. in the area of sustainability, leading executives of major corporations in the UK (included following corporations Marks and Spencer, GE, O2, Pepsico, Morrisons, Sky Asda and Avica) wrote an open letter to The Guardian newspaper in 2011 stating that (McDonagh & Prothero, 2014: 1186–1187):

The UK will enjoy a healthy, long-term recovery only if business leaders put the environment at the heart of corporate strategies. In the past, UK plc has too often regarded 'sustainability' as an optional add-on, rather than an essential element of corporate and national economic success.

The same trend for developing sustainability policies applies for individual companies as well. As McDonagh and Prothero write in their article about sustainable marketing, consumers believe they can make a difference and are changing their consumption practices accordingly. This creates more and more pressure for companies to perform well also in the area of sustainability.

EU plays a really important role as an organization which influences consumer awareness related business strategies. There are many international organizations whose role in setting business strategies is being discussed in this text as well. There are as well other national institutions influencing the above discussed strategies at national level but due to the variety of those institutions their role and influence are not being discussed in this text.

There was a very interesting discussion in J. Coleff's and M. Celentani's article about consumer awareness. Even though the consumers would have a right to replacement or refund for the product if the purchased product is faulty, not all consumers exercise their right to get a replacement for example. The claiming costs could be high or perceived by consumers to be high (Coleff & Celentani, 2017: 2). There might be a really interesting opportunity for companies which aim to perform at an ethically high level: they could try to develop ways for consumers to make product claims cheaper and in a more simple way which would also cause fewer costs for consumers as claiming costs.

6.2. Corporate social responsibility as a business world response to the changes taking place in business environment

T. Vaaland, M. Heide and K. Gronhaug discuss the connection between marketing function in companies and Corporate Social Responsibility (CSR). Marketing is a central business discipline and is from the groups of business disciplines the most preoccupied from different company functions to form a connection between the firm and the environment. For this reason the connection between CSR and marketing is especially interesting (Vaaland, Heide, Gronhaug, 2008: 928).

Firms do not operate in a vacuum. Firms should be seen as 'open systems' dependent on some actors in the society. Through exchanging output with the environment there are consequences which impact and transform society. In this operation the consequences of firms' actions might be also negative. This idea is nothing new. The fact that companies need to take

environmental issues into consideration in their actions has for long been realized (Vaaland, Heide, Gronhaug, 2008: 928). There are good examples where these kinds of efforts have been done in co-operation between environmental pressure groups and companies. McDonagh and Prothero mention in their article an example of McDonalds and Greenpeace working together to end soy bean farming in the Amazon (McDonagh & Prothero, 2014: 1187).

Solomon et al define that CSR is addressing two types of responsibilities: commercial responsibility (running their business successfully) and social responsibilities (that is their role in society and the community). European consumers expect corporations to be active members of the society. Public's key priority in a large survey was a demonstration of a good corporate citizenship. Important issues for the respondents were also quality and service, human health and safety and finally being open and honest (Salomon et al., 2010: 53).

Marketing as a function is changing all the time. This change is also visible in the text below dealing with marketing strategies. Marketing has focus, identity and special interests. In a way marketing can be seen as specific 'glasses' through which the phenomenon of CSR is examined. It is not enough to address a question: to what extent the marketing discipline has addressed CSR? The way CSR is captured through the marketing 'glasses' is of equal importance. This could be visible e.g. in a question ... what aspects of CSR have been influenced by marketing thought? (Vaaland & Heide & Gronhaug, 2008: 928).

As a concept CSR had many definitions and all definitions might not be so clear. Anyway this ethical side of firm's behavior is considered to be very important. Customers are more and more looking for these kinds of issues when they do transactions with different enterprises. In a Global CSR Study (in 2015) conducted by Cone Communications they found out that 91% of global consumers expect firms to do more than to make a profit. The companies are also expected to operate responsibly and to address social and environmental issues in the operations as well ("Global CSR Study"). Consumer rights and consumer awareness issues for businesses could be perceived to be topics included in the discussion above.

Eteokleous, Leonidou and Katsikeas point out in their article a very important viewpoint about CSR in an international context. Companies which operate outside of their national borders makes them more vulnerable to social-related issues like human rights, abuses, unhealthy working conditions and anti-social behavior. The challenge for CSR when operating internationally is the more difficult management for firms even though one wished to follow high level of ethical standards while operating abroad (Eteokleous, Luonidou, Katsikeas, 2016: 580–581). This is almost a self-evident issue, but its role needs to be observed when operating abroad.

6.3. Marketing strategies and ethics

More and more companies use ethical marketing or socially responsible marketing as a marketing tool. The policy of enlightened marketing is a concept that falls under the umbrella of socially responsible marketing. Enlightened marketing states that “a company’s marketing should support the best long-run performance of the marketing system” (Kotler et al. 2008: 115). Enlightened marketing contains the five principles ... at least consumer-oriented marketing, value marketing and societal marketing of those five principles have a strong connection to consumer awareness or consumer rights. More about these principles mentioned above in the following text. In addition to those three marketing principles the concept of relationship marketing and sustainability marketing are being discussed as well in this text.

Consumer-oriented marketing

Customer-orientation has been an important corner stone of marketing theories for a long time. After competition in the markets was increasing and survival in the markets became harder and harder, companies started to develop products based on actual consumer needs and latent needs. Also meeting consumer’s needs in the future is important in consumer-oriented marketing. In consumer-oriented marketing, consumers are already in the center of business creation when the products are developed in the research and development process (Kotler & Armstrong, 2010: 626).

Value marketing

Value marketing is a principle, which emphasizes the long-term objectives of marketing. The company should put most of its resources into customer value building investments. Often marketing investments are short-term investments like e.g., sales promotion investments, packaging changes, direct response advertising etc. Those kinds of investments operate like typical sales promotions investments; they will raise sales in a short run. However they add less value than would actual improvements e.g. in the product's quality and features. Enlightened marketing calls for building long-term consumer loyalty and relationships by continually improving the value for consumers. The company can capture value from consumers in return (Kotler & Armstrong, 2010: 626).

Societal marketing

Social marketing is a marketing concept that holds that a company should make marketing decisions by considering consumers' wants, the company's requirements, and society's long-term interests. Philip Kotler has been active in developing the concept of social marketing from the early stages of the concept. In 2002 Kotler et al. defined social marketing as 'the use of marketing principles and techniques to advance a social cause, idea or behavior' (Kotler, Roberto, Lee, 2002: 8). Social marketing concept and societal marketing concept could be also perceived to be close to each other. Social marketing could on the other hand refer to the type of organization carrying out marketing e.g. by nonprofit or government organizations (Kotler & Keller, 2016: 694).

The societal marketing concept calls upon marketers to build social and ethical considerations into their marketing activities. They need to define the needs, wants, and interests of a target market and to deliver the desired satisfactions more effectively and efficiently than competitors and at the same time taking into consideration society's well-being. Suppliers have to think about how to preserve and enhance the well-being of consumers and society as a whole. Social marketing is closely linked to the principles of corporate social responsibility and of sustainable development (Kotler, 2000: 25).

When you think about communication about societal marketing activities towards customers, you need to also recognize that consumers are better educated and informed and they are competent enough to choose products which are not creating undue problems for society (Gilbert, 2003: 387).

Following points are relevant in societal marketing context based on Gilbert (Gilbert, 2003: 387–388):

- ✓ good business managers should be socially responsible to all stakeholders related to the company. They should follow laws and regulations and be ethical in management decisions;
- ✓ managers should be honest in claims and promotions, not be deceptive or agree to misleading advertising. They should also show fairness to third parties. In addition, there should not be any hidden costs;
- ✓ the retail products offered should not cause harm when in use or on disposal and managers should also openly communicate any risks which are known to be associated with any product;
- ✓ marketers should undertake not to adopt sales techniques or fund-raising faking it to be research.

Relationship Marketing

An interesting issue about the marketing principles discussed above is that especially consumer-oriented marketing and value marketing have a lot in common with relationship marketing. It is a marketing theory applied especially in service marketing, business to business marketing and durable goods marketing. In the article by Nguyen and Mutum about Customer Relationship Management, the authors describe the relationship from the business point of view in the following way: a particular business should be defined by its customers through an ongoing relationship. This kind of relationship is based on quality, dialogue, innovation and learning. This kind of marketing is regarded to have a more sustainable strategy and could be seen as largely inimitable by competitors – it could create a long-term competitive advantage (Nguyen & Mutum, 2012: 401). Main issues in relationship marketing are, for example, customer satisfaction, long-term orientation and increasing customer retention.

The supplier makes sure that after each transaction the customer is satisfied. Very satisfied customers will most likely return. This is guaranteed by tailor making solutions for each individual customer as is typically done in service marketing and business-to-business marketing. There is an ongoing two-way relationship where supplier follows customer's needs and develops products to existing needs of the customer and follows also customer need development (Nguyen & Mutum, 2012: 401). When customers are satisfied with the supplier's solutions during a longer time frame, customer loyalty develops which might lead to a creation of preference towards certain supplier. The supplier might in this kind of situation become an exclusive supplier for the customer.

Sustainability marketing

Frank-Martin Belz defines sustainability marketing involving building and maintaining sustainable relationships with customers, the social environment and the natural environment. As it is visible from this definition, sustainability marketing shares the long-term orientation of relationship marketing. Sustainability marketing also involves the integration of social and environmental criteria into traditional marketing thinking and processes. Those issues have to be integrated into marketing values and the setting of marketing goals. While doing the transition to sustainability marketing following issues have to be also reconsidered (Peattie & Belz, 2010: 9–10):

- ✓ taking into consideration socio-ecological problems as a starting point in the marketing process;
- ✓ considering consumer behaviour holistically;
- ✓ restructuring the marketing mix; and
- ✓ appreciating and reutilizing the transformational potential of marketing activities and relationships.

Conventional marketing is seen as an activity to respond to consumers and society, but does not have the power to influence or change society. Belz and Peattie agree that sustainability marketing should be distinctive through recognizing and pursuing the potential of companies to change the environment in which they operate. In this kind of marketing environment companies could have important roles in environmental changes towards

sustainability in the society as a whole. In the United States, for example, 'green' firms have hired lobbyists to represent their businesses in the US Congress to push for changes to public purchasing policies, tougher environmental regulations, infrastructure investment, research investment in sustainable technologies and taxation or subsidies which would favor sustainable products. As societal and political institutions take steps, which encourage more sustainable consumption, it becomes easier for companies to market innovative sustainable solutions (Peattie & Belz, 2010: 13–14).

A more detailed description of sustainability marketing and marketing ingredients i.e. marketing mix will be discussed in the next subchapter, marketing mix strategies.

6.4. Marketing mix strategies and business responsibilities

Marketing mix strategies are approached from two different viewpoints. The first one is based on corporate responsibility in marketing. These thoughts are based on Harmaala's and Jallinoja's book about Corporate Responsibility and Successful Business. The other viewpoint is based on complaints and problem areas of consumers based on actual cases.

In the following section, we discuss the 4 Ps (Product, Price, Place and Promotion). Let us start with Product. In a company, doing corporate responsibility in the right way product concept has to be broader than in a regular company. The product has different layers: e.g. core product, actual product and augmented product. For instance, if the company emphasizes environmental issues, all three layers of the product need to support the message of the product being environmentally friendly. E.g. packaging solution might be controversial with the product being environmentally friendly. With an environmentally friendly product you need to also consider what happens with the product when it comes to the end of its product life cycle. How can customers recycle the product, etc. (Harmaala & Jallinoja, 2012: 153–154)?

Important issues to consider about pricing are that the product's total price covers the whole product life cycle of the product. It includes purchas-

ing price, costs to purchase the product, the costs to use the product and costs that are related to the disposal of the product. Traditionally, environmentally friendly products, for instance, have higher purchasing price compared to traditional products but costs to use the product or costs related to the disposal of the product might be lower. The challenge of marketing is to make these price differences visible and make customers perceive that these price differences are important for the customer as well (Harmaala & Jallinoja, 2012: 155–157). Electrolux has emphasized in its marketing environmental friendliness of the products. In USA Energy Star program enables customers to compare life cycle costs of different products (energystar.gov).

When you think about companies' solutions related to place, you need to think about the benefits what customers are looking for with different distribution channels. The benefits customers could be looking for might be connected to effortless purchase or disposal of the product. This kind of goal towards effortless purchasing is emphasized in western countries where customers have lack of time, not lack of money. The challenge faced by the companies is related to the choosing of combination of the distribution channels. All channels face certain challenges in this respect. The increasing number of environmentally friendly customers and responsibly behaving customers has led to the development of new distribution channels. Communal purchasing practices have been e.g. created as a response to this challenge. Food co-operatives and procurement rings have been e.g. created in some bigger cities (Harmaala & Jallinoja, 2012: 158–160).

How to promote the products in a company doing corporate responsibility in the right way? In sales promotion the campaigns could be related e.g. to recycling. The client might get a price reduction when he or she recycles an old product. Direct marketing could provide huge possibilities for companies operating in this sector. In Finland a study was made in 2010 and they found out that responsible consumers are a huge target audience for direct marketing. This potential could be reached if you can avoid the image for spamming and provide valuable information about your responsible products and product characteristics for your customers. The use of social media might also provide huge possibilities for companies operating in this sector. Especially consumers who are interested about responsible con-

sumption are eager to find information about the products from peers or supporting information about purchase from internet. The control of digital media is impossible. Information on digital media is developing towards two-way mutual communication between companies and people. Information develops in an interactive process between consumers, organizations, media and enterprises. Advocacy groups are very active in using social media both in positive and negative cases (Harmaala & Jallinoja, 2012: 160–162).

Doing corporate responsibility right in a company, you should think about the client concept in a different way. Client is traditionally perceived to be the purchaser of the product or service. In an organization operating this way other interest groups should be also perceived as clients even though they would not even be potential clients. For instance, when dealing with environmentally friendly products, different kinds of influencers and organizations could play an important role in affecting the consumption behavior of consumers (Harmaala & Jallinoja, 2012: 154).

Additionally, the concept of customer satisfaction should be perceived in a different way compared to an enterprise operating in a traditional way. Traditionally, a good quality product is perceived to be a product which meets customer expectations. In an environmentally friendly product, an important factor in customer satisfaction would be the possibility to recycle the product or e.g. a possibility to participate in charity through the purchase of the product (Harmaala & Jallinoja, 2012: 154).

In sustainability marketing, marketing mix ingredients have to be defined in a different way than in the traditional marketing mix. In the following text you'll find marketing mix ingredients mentioned by Belz and Peattie in their article: 'Sustainability marketing – An innovative conception of marketing'.

In traditional marketing thinking we tend to perceive purchased material goods and immaterial services as a solution to a particular problem linked to a want or need. From sustainability perspective products and services need to take into consideration both customer problems and socio-ecological problems. There are many different aspects of characterizing a sustainable product including the sustainability of the society where the product is being produced and consumed. The other author of the article

referenced has in his earlier publications defined a sustainable product in the following way: 'Sustainable product or service refers to those that offer satisfying solutions to customer needs and significant improvements in social and environmental performance along the whole product life cycle in comparison to conventional or competing offers' (Peattie & Belz, 2010: 11–12).

Peattie and Belz emphasize following six characteristics of the offering. Sustainable products and services have to be able to satisfy customer needs. Otherwise they won't survive in the market in a long run. Sustainable products have to also have dual focus – also focus on ecological and social aspects. Sustainable products have to consider the whole life cycle of the product all the way from extraction of materials until post-use issues. Sustainable products have to be able to provide significant contributions to (a) socio-ecological problems on global level, or (b) socio-ecological problems of products analyzed and identified with instruments of life cycle assessment, or (c) both. Sustainable products need to be continuously improved as far as customer, social, and environmental performances are concerned. The need for change is due to state of knowledge, latest technologies and societal aspirations, which change over time. A sustainable product might still lag behind competing offers. Thus, competitors' offerings are yardsticks for improvements regarding to customer, social and environmental performances (Peattie & Belz, 2010: 12).

Peattie and Belz discuss in their article about pricing of products. In sustainable products the total customer cost has to be considered carefully. Total customer cost is formed from four elements: price, purchase cost, cost of using the product and post-use costs. Consumers, who seek to manage lifetime costs, may behave differently, creating opportunities for innovative products and systems (Peattie & Belz, 2010: 12).

From the customer's perspective, an important issue is the convenience of the distribution process. Convenience is highly valued by customers, and for cash-rich / time-poor customers it may be an important driver leading to purchasing decision. Convenience represents a challenge for sustainability marketers, since historically there has often been a trade-off between convenience and environmental performance (Peattie & Belz, 2010: 12–13).

In promotion it is important to make customers aware of the sustainable solutions that have been developed, and how they will integrate to customers' lifestyles and meet their needs. Effective communication to forge long-term relationships with customers will also be crucial to ensure that a whole life cycle approach is used in the management of sustainable solutions. The challenge of sustainable marketers is to develop communication which suits the nature of their customers to the solutions (sustainable products and services) developed for their clients. You need to be careful though with 'greenwashing' and the negative issues related to all the time increasing amount of green marketing (Peattie & Belz, 2010: 13).

The major areas of consumer complaints in EU in 2016 were consumer goods (163000), general consumer services (60000), financial services (44000), postal services and electronic communication (39000), transport services (30000), energy and water (26000) and leisure services (23000). Other categories had less than 10000 cases. Total amount of complaints was close to 425000 (Justice and Consumers, 2017).

There is a large variety of reasons for the cases discussed above. Largest group of complaints is 'other reason' (about 160000 cases). Biggest single reason was quality of goods and services (60000). The delivery of goods / provision of services was the second biggest reason for complaints (57000). These two main reasons were followed by contracts and sales (47000), unfair commercial practices (37000), invoicing / billing and debt collection (22000), price / tariff (16000) and redress (10000). Other single reasons mentioned had less than 10000 cases. This information was retrieved from European Commission's Justice and Consumers website (Justice and Consumers, 2017).

In the 10 year anniversary report of the European Consumer Centers Network it is stated that the amount of complaints involving e-commerce transactions has been increasing lately dramatically. By 2014, more than two thirds of the complaints involved e-commerce transactions (European Consumer Centres Network, 2017).

6.5. Regulations set for ethical marketing and business in European Union

Effective consumer policy is very important for an efficient operating of the European market. Consumer protection in the EU is not only being evaluated from customer perspective, effective consumer protection is also seen to create market efficiencies within the EU. Effective consumer protection aims to guarantee consumers rights vis-à-vis merchants. In the EU consumer protection rules are seen to have the potential to make markets fairer and improve the quality of competition. For this reason empowering consumers and effectively protecting their safety and interests have become essential goals of European consumer policy (Consumer policy: principles and instruments, 2018).

The attitude of the EU is also visible in legal solutions related to consumer rights. Article 114 TFEU is the legal basis for harmonization measures aimed at establishing the internal market. In this article the objective of ensuring a high level of protection is emphasized (Consumer policy: principles and instruments, 2018).

Article 169 TFEU introduced a legal basis for actions at European level in the area of consumer protection. It stipulates that ‘in order to promote the interests of consumers and to ensure a high level of consumer protection, the European Union shall protect the health, safety and economic interests of consumers as well as to promoting their right to information, education and to organize themselves in order to safeguard their interests’. In the article there is a strong emphasis on consumer interests in other EU policies as well. In this sense, Article 169 strengthens Article 114 and broadens its significance beyond single market issues to include access to goods and services, access to the courts, the quality of public services, and certain aspects of nutrition, food, housing and health policy. There is also a statement that EU measures must not prevent any Member State from maintaining or introducing more stringent measures as long as they are compatible with the Treaties. Consumer policy is part of the Union’s strategic objective of improving the quality of life of its citizens. In addition to direct action to protect rights, the European Union ensures that consumer interests are

built into EU legislation in all relevant policy areas (Consumer policy: principles and instruments, 2018).

In accordance with Article 12 TFEU, consumer protection requirements must be taken into consideration in defining and implementing other Union policies and activities. Article 38 of the Charter of Fundamental Rights of the European Union reinforces consumer protection by stating that Union policies must ensure a high level of consumer protection (Consumer policy: principles and instruments, 2018).

The EU has organized consumer education actions at various stages, such as the gradual inclusion of consumer education in primary and secondary school syllabuses. The Europa Diary is a school diary aimed at students in secondary school (aged 15–18 years). It contains information for young people on EU-related issues, including their rights as consumers. The Commission has also piloted teacher training schemes and supported the creation of Master's degree courses on consumer policy. The interactive and online consumer education tool 'Dolceta' (<http://www.dolceta.eu>) is available in all Member States and in all the official EU languages. It is aimed at trainers and teachers but also at the informed consumer, and covers basic consumer rights, product safety and financial literacy. To stimulate university-level education in consumer policy, the Commission has awarded start-up grants to set up Master's degree programs (Consumer policy: principles and instruments, 2018).

Better information and improved knowledge of consumer rights could lead to enhanced consumer confidence. The EU has set up European Consumer Centres (the ECC-Net) to provide information and advice on cross-border shopping and to handle consumer complaints (Consumer policy: principles and instruments, 2018).

ECC-Net is a consumer centers network in the EU, Norway and Iceland. It provides information about consumer rights and assists in resolving disputes when the consumer and trader involved are based in two different European countries (EU, Norway and Iceland). The European Consumer Centre can (Consumer policy: principles and instruments, 2018):

- ✓ explain your rights as a consumer,

- ✓ help you settle a dispute with a seller based in another EU country (or Norway and Iceland),
- ✓ tell you who to contact if they can't help.

FIN-NET network fulfills the same role for complaints about cross-border financial services. The Commission also conducts consumer information campaigns in the Member States and publishes practical guides for consumers. SOLVIT is a service dedicated to resolving disputes resulting from breaches of European law (“Consumer policy: principles and instruments”).

The Consumer Rights Awareness Campaign, organized by the Commission, took place from spring 2014 to early 2016, informing citizens of their rights under EU consumer law and pointing them to the right places where they could obtain advice and help. The goal of the campaign was to increase general knowledge among traders and consumers of EU-wide consumer rights. Particular focus was on the Consumer Rights Directive, the Unfair Commercial Practices Directive, the Unfair Contract Terms Directive and the Consumer Sales and Guarantees Directive (Consumer policy: principles and instruments, 2018).

Research carried out for the European Parliament indicated that while there is a lot of information available on the internet on consumer rights, this information is dispersed among numerous sources. Your Europe portal plays an important role in offering access to improved information on consumer policy and in gathering different information sources into one reference information center (Consumer policy: principles and instruments, 2018).

The effective and correct enforcement of consumer rights is just as important as the existence of these rights. The responsibility for their enforcement lies mainly with the national authorities. Regulation (EC) No 2006/2004 on consumer protection cooperation links up these national authorities in an EU-wide network, providing them with a framework to exchange information and to work together to stop any breach of consumer protection laws (e.g. on misleading advertising or distance selling). The network also carries out joint market surveillance and enforcement activities (Consumer policy: principles and instruments, 2018).

There are ten principles of consumer protection in the EU (from EU websites and Solomon book). Those principles are (Consumer Protection in the EU: Ten Basic Principles, 2017):

- ✓ buy what you want, where you want,
- ✓ if it doesn't work, send it back,
- ✓ high safety standards for food and consumer goods,
- ✓ know what you are eating,
- ✓ contracts should be fair to consumers,
- ✓ sometimes consumers can change their mind,
- ✓ making it easier to compare prices,
- ✓ consumers should not be misled,
- ✓ protection while you are on holiday,
- ✓ effective redress and cross-border disputes.

Of course all of the above mentioned principles are important to keep in mind for firms operating in the EU area. In consumer awareness most important issue to keep in mind while taking good care of the customer in problem situations is the last principle: effective redress and cross-border disputes.

This means that consumer interests should be promoted and defended, particularly in view of the increasing complexity of the markets in which they operate. The scope and size of markets has grown enormously over last few years. Reasons for the growth have been e.g. introduction of the euro, the development of e-commerce and increased intra-EU mobility. Recognizing consumers as essential economic agents in the internal market is one of the key principles of European consumer policy. Consumers should be empowered to make informed choices about the goods and services that they buy (Solomon et al., 2010: 18).

6.6. Regulations set for ethical marketing and business by other international institutions

There are several global and international programs which are related to ethical issues in doing business. Few programs which should be briefly mentioned are UN (United Nations) Global Compact Program, OECD instructions for multinational companies about doing business, European Advertising Standards Alliance, The Blue Book and EASA (European Advertising Standards Alliance) Cross Border-organization (Paloranta, 2014: 3–5).

UN Global Compact Program is promoting responsible company culture. Their goal is the advancement of adaptation of advanced values in following areas in companies: human rights, working life, environment and corruption (Paloranta, 2014: 3).

United Nations has also set key principles for consumer protection on an international level: UN Guidelines for Consumer Protection (UNGCP). UNGCP stresses and urges the role of governments to develop and maintain a strong consumer protection policy. More detailed information about UNGCP from UNCTAD website (United Nations Guidelines for Consumer Protection, 2017).

OECD instructions for multinational companies deal with rules of conducting business for multinational enterprises. OECD instructions cover same type of areas of conducting business as in the UN Global Compact Program and some additional areas e.g. taxation. Important additional area which is covered in UN Global Compact Program from this book's perspective is consumer protection (Paloranta, 2014: 4–5).

EASA is an international advertising area organization, which does self-regulation with the aim to have highest possible ethical standards and practices in this business area. This organization also participates actively in the International Chamber of Commerce activities dealing with advertising and marketing in addition to some other international activities (Paloranta, 2014: 5).

EASA has also a publication The Blue Book – Advertising self-regulation in Europe and beyond. The book contains information about EASA and its operations. The book also contains broadly information about laws of several countries in the area of advertising (Paloranta, 2014: 5–6).

Cross-border organization of EASA creates connections between organizations dealing with self-regulation in different countries. This makes it possible to intervene with inappropriate advertising from another country. There are more and more these kinds of complaints made between different countries (Paloranta, 2014: 6).

International Chamber of Commerce has established ICC Consolidated Code of Advertising and Marketing Communications Practice (“Advertising and Marketing Communication Practice”). The main idea of the practice is to maintain and develop trust with customers. ICC has played a role as a major rule-setter since 1937 when ICC issued the first ICC code on Advertising Practice (Paloranta, 2014: 49).

The ICC Consolidated Code of Advertising and Marketing Communications Practice is applied to all advertising and other marketing. Every company operating in the area of marketing has to take into consideration these ethical principles set by this practice. Cultural issues as well as legal environment can / have to be taken into consideration when applying ICC Consolidated Code of Advertising and Marketing Communications Practice in a certain country (Paloranta, 2014: 50).

The ICC Consolidated Code of Advertising and Marketing Communications Practice is not however applied to all business communication. Those rules are not applied e.g. to press releases, annual reports, informative labels etc. In addition to above mentioned communication e.g. noncommercial information e.g. education oriented material or entertaining material is not covered by the rules (Paloranta, 2014: 50).

The basis for the ICC Consolidated Code of Advertising and Marketing Communications Practice is set by the basic rules. The basic rules include issues e.g. about the information truth and recognizability. These basic rules are complemented by special rules. These special rules should be interpreted in connection with the basic rules. The special rules are set for the following topics (Paloranta, 2014: 51).

Chapter A – Sales Promotion

Chapter B – Sponsorship

Chapter C – Direct Marketing

Chapter D – Advertising and Marketing Communications Using Digital Interactive Media

Chapter E – Environmental Claims in Marketing Communications

The latest development in the ICC Consolidated Code of Advertising and Marketing Communications Practice took place in the area of Digital Interactive Media (Paloranta, 2014: 51).

European Parliament is constantly improving consumer protection rules in Europe. Consumer protection policy has shifted from being a technical harmonization of standards policy to become part of the drive to improve the objective of establishing a 'citizens' Europe'. The co-decision procedure and the widening of the areas of legislation to be adopted gave European Parliament the power to develop and strengthen EU consumer protection legislation. As a result of the European Parliament's legislative effort, as of 13 June 2014 Member States apply the national laws implementing the Consumer Rights Directive (Consumer policy: principles and instruments, 2018).

Parliament plays an important role not only working on European legislation but also setting policy agenda in the area of consumer protection by adopting own-initiative reports. Parliament has been particularly active in ensuring higher budgetary provisions for measures in areas such as the information and (financial) education of consumers and the development of consumer representation in the Member States, with the emphasis on Member States that acceded after 2004 (Consumer policy: principles and instruments, 2018).

Conclusion

The main question in this chapter was to discuss about consumer awareness and how companies could in their own strategies take this phenomenon into consideration? This is a challenging question. The markets and customers are changing, so is their behavior. On the other hand companies have been also active to respond to the changes taking place in the markets. Companies need to do this as well because expectations towards the performance of companies in this area are rising. Public administration and consumers individually and in groups are influencing this development.

In this chapter there is a brief discussion about the factors, which need to be considered while talking about consumer awareness. Those factors are: consumerism, consumer rights, corporate social responsibility and business ethics. Companies need to have a holistic view of the market and have a broader perspective when making decisions about the strategies they are going to implement when dealing with consumer awareness and related issues. They need to also follow what kind of development is going to take place in the market related to consumer awareness.

In this chapter following marketing disciplines and theories have been discussed: consumer-oriented marketing, value marketing, societal marketing, relationship marketing and sustainability marketing. After this discussion marketing strategies are approached from marketing mix point of view. What kind of issues to consider when implementing marketing mix decisions in this kind of operational environment.

The regulations and rules on European and Global level are studied in this chapter as well. The framework of ethical marketing is changing all the time. Companies need to follow the development in the operational environment continuously. European Union has taken a role to push forward consumer rights in European Union. There are also other organizations on global level that have similar type of role on global level e.g. International Chamber of Commerce.

PART III

CONSUMER PROTECTION IN EUROPE

Consumer policy on the European market – models and organizational structure

Sławomir Smyczek

Introduction

In market economy the consumer should have the possibility of selecting the right product, as well as the form, place, and time of its purchase, and should have proper conditions for making the right decision (Schiffman & Kanuk, 2010). Such goals are achieved by means of various methods and tools. In the European Union all those instruments and actions are systematized within the framework of consumer policy, which all member states need to implement on the local market. Consumer policy covers all the actions undertaken by the state connected to the development conditions on the market that facilitate the pursuit of consumers' rational fulfillment of needs from their income. in the most satisfying way. In practice, running a consumer policy is an indispensable activity of the state to create a fair, competitive and sustainable market. It is also the result of the government's commitment to take into account, respect and create conditions for the implementation of the consumer rights. In addition, consumer policy is the main responsibility of the state towards its citizens.

7.1. Consumer protection on market – historical background

Consumer interest refers to the body of law that pertains to things the producers of goods must do in order to protect consumers from harm. These laws have come into existence through a series of legal disputes, and have been designed as a result of those cases. Consumer rights require protection because of many threats on the market. Those threats against consumers' interests are usually connected with the following (Niepokulczycka, 1998):

- ✓ lack of transparency in the market (many diverse products, introduction of new products etc.);
- ✓ depersonalisation of the market;
- ✓ selling products in large shopping facilities;
- ✓ using sophisticated methods to seduce buyers, e.g., by arousing emotions as a motivation to purchase a product;
- ✓ artificially provoked needs, e.g., through promotional activity of enterprises;
- ✓ increasing prices through manipulating the assortment of goods and by means of a well-developed brokering network;
- ✓ over-function of packing, which often causes an increase in prices and has ecological consequences etc.

Highly developed countries have to face problems connected with the standard and quality of living of the whole society, limitation of competition, threats against the natural environment, and careless use of non-renewable sources of raw materials and energy. These are associated with marketing activities perceived as contradicting the original philosophy (Davies & Pardey, 1994). The complaints usually refer to quality, price, or consumer service; and they may, for instance, be related to the abuse of certain techniques and marketing instruments (Kaleta, 2006). Since most of the time the decisions related to buying goods are subconscious, it is both advisable and necessary to protect consumer interests. Consumers do not have the

possibility of carefully analysing every purchase, and so there are many ways of provoking consumer behavior based on subconscious reflexes (Bishop, 2010).

Consumer interests are threatened in many ways. Four spheres of operation of such threats are axiological, economic, qualitative, and commercial. The axiological sphere involves such activities of the producers as creating excessive needs, wrong needs, and the need for restitution. The economic sphere refers to threats caused by the purchase of goods of reduced mass and/or at an increased price. The qualitative sphere refers to latent defects of goods, legal defects, and contents that are harmful substances and components. In the commercial sphere, the consumer may suffer losses due to mismanagement arising from style of living, habits, lack of planning, and so on (Vizer, 2010).

Some of the threats against consumer interests are observed throughout the whole country, while others refer only to certain social groups. The countrywide threats are caused by civilization processes, industrial and technological processes as well as organizational processes in the economy, and lack of appropriate laws for consumer protection. Threats against the interests of social groups are usually connected with solutions adopted in the economy to settle certain problems. The premises for consumer interest protection as well as the number of various types of threats justify the need for those interests to be protected (Smyczek & Kozak, 2013).

The term consumer interest protection is a descriptive term and is used to characterise a set of activities directed towards the protection of consumers when their rights and interests are being threatened (Blackwell, Miniard, Engel, 2001). The descriptive nature of the term has, however, some significant consequences. The manner of perceiving that set of activities, which is crucial for consumer interests, varies depending on the field the author specializes in, on the perspective taken to observe phenomena, and on the current socio-economic situation. The idea of consumer protection emerged in the 19th century when the market economy was born. The first activities aimed at the protection of buyers against exploitation and unfair trade practices were undertaken by the developing cooperative movement (Maliszewska-Nienartowicz, 2004). The consumer movement, as well as other social movements originated in the period of rapid industri-

alisation in the second part of the 19th century, mainly in the U.S. The key event for the process was John F. Kennedy's address to the Congress on March 15, 1962, when four basic consumer rights were pronounced: the right to safety, the right to be informed, the right to choose, and the right to be heard. These rights were later developed by Consumers International until they became the basis for the Guidelines of the General Assembly of the UN on consumer protection (adopted in 1985). The issue of consumer protection was also discussed in European Communities. The formation of community consumer protection was a multi-stage process (Kieźel, 2007).

What ought to be considered, then, is the scope of consumer interest protection. This protection covers the most precious things, such as life, health, material interest, and position in the market. The subjects of protection are the consumer and the institutions organizing activities in the area of consumer interest protection. The latter include the state, self-governing bodies, social organizations, and consumers themselves. The activity of all those groups of subjects acting in favour of consumer interest protection should form an overall system of protection (Smyczek & Kozak, 2013).

An important term related to consumer protection is consumerism. It is an umbrella term for all the activities undertaken by state, social, and private institutions for the benefit of consumers. In a broader sense, consumerism is a movement designed to increase the rights of consumers in their relation with producers and providers of goods and services (Raymond, 2003). It is a mixture of people, ideas, and organizations representing groups and needs that were not represented before, trying to induce some changes or a reform of the existing rules. The movement defends basic consumer rights and these include (Kieźel, 2007) the following:

- ✓ The right to protection against products and services that are dangerous for health and life. No such products and services should be present on the market. For this purpose safety requirements need to be stipulated, and consumers need to be informed of the possible risks connected with the use of particular products or services. Consumers also need to be protected against accidents.
- ✓ The right to protection of economic interests. This ought to provide consumer protection against the producers, brokers, or retailers abusing

their position. It involves a ban on unfair competition and on imposing unfavourable terms of contracts, the idea of improving the quality of goods and services and caring for environmental protection.

- ✓ The right to information and to consumer education. The consumer should have the actual possibility of making a conscious choice in the market. This requires reliable information on the characteristics of products and information on the prices of goods and the methods of their use. Another important issue is information on procedures of executing consumer rights.
- ✓ The right to an effective system of pursuing claims. In the case of a complaint, the consumer should have access to professional aid.
- ✓ The right to representation. Consumers have the right to present their opinion on all matters concerning their individual as well as collective interests, i.e., the interests of a consumer community. Voluntary consumer associations constitute such representation.

The basic objective of consumerism is to extend the rights and powers of buyers in their relationship with sellers of goods and service providers. Thus consumerism motivates all subjects participating in economic life to be active in educating and informing consumers as well as in protecting consumer rights (Harris, 2010). What needs to be considered are the forms of protection and their instruments. The multiplicity of threats against consumer interests makes it difficult to apply a single method of protection. The forms of consumer protection include pro-consumer legislation and institutional forms. Those legal and extra-legal forms of protection are closely related and they intermingle. In the countries where a market economy is well developed, the governments create a system of laws and institutions to protect consumer interests (Doole, Lancaster, Lowe, 2005). This system nicely supplements the basic and effective protection provided by the market mechanisms, competition, and business ethics.

The instruments of consumer protection can be divided into three groups: state instruments, individual instruments, and mixed instruments (Sawyer, 2010). The state instruments are activities of the state that, either directly or indirectly, protect the consumer without his/her active participation, e.g., obligatory standards of quality and safety, labelling food, anti-trust

law, etc. The state acts on behalf of the consumer. Individual instruments are types of consumer behavior that protect him/her. Whether a consumer uses them or not depends entirely on him/her. They include all kinds of decisions made by the consumers, such as where to buy, for what price, how to use the product, how to treat a trademark, etc. Mixed instruments are the laws that vest in consumers the right to protect their interests, such as the part of the Civil Code that refers to warranty and others.

It is worth noting that it is the consumers who bear the greatest responsibility for their own protection. The state, on the other hand, should provide proper conditions by providing legal norms and regulations, education, and broad access to information. Economic processes undergo globalization and thus become more and more complex, technology changes rapidly, and economic pathology spreads. All these factors make state intervention on behalf of a consumer practically indispensable (Keay, 2010). Thus, consumer actions to protect their interests ought to be supported by the state.

The protection instruments may also be divided into the following groups: legal, economic, psychological, and ethical. Legal instruments are the laws that objectively concern consumers, the goods they buy, or the entities offering those goods, and such enactments that do not directly refer to the consumer, but which provide the conditions for the proper functioning of the market (packages of laws protecting fair competition and anti-trust laws). Economic instruments are those that are used by the consumers themselves as well as those that are used by the producers and vendors. This group of instruments includes some factors that are related to quality protection, such as trade-marks, quality standards, certificates etc. Psychological and ethical instruments may also be of considerable importance, though their practical significance in present conditions is rather small (Wells & Prenskey, 1996).

7.2. Consumer policy on the European market

Consumer policy is generally aware of the actions of the state, aimed at shaping such conditions on market that facilitate the pursuit of consumers' aspirations to the fullest possible satisfaction their needs form from their income (Antonides & van Raaij, 2003).

Running a consumer policy is an indispensable activity to create a fair, competitive and sustainable market. In the European Union it is also the result of the government's commitment to take into account, respect and create conditions for the implementation of consumer rights. In addition, consumer policy is the main responsibility of the state towards its citizens. Governments know that it is in society's interest that societies develop properly. To stimulate the proper functioning of the economy, the risk posed by the consumer must be reduced to a minimum. If consumers have a weak position on the market, they can't be a full-fledged partner influencing the development of the whole economy (Kieźel, 2007).

An important aspect of protecting consumer interests is also the care for ensuring proper competition on the market. Properly pursued competition policy will contribute to social and economic cohesion. Competition policy, which EU Member States want to pursue, aims at maintaining and developing effective competition on the common market by influencing its structure and the behaviour of the market players. The need to compete with each other means that companies are obliged to reduce production costs and increase productivity, which in turn is aimed at increasing the competitiveness of the entire economy. Effectively functioning competition improves the quality of life of citizens and their purchasing power, which contributes to the protection of consumers' economic interests (Komisja Europejska, 2002).

Proper introduction of consumer policy in the country requires the creation of the following conditions (Kieźel, 2007: 31):

- ✓ Appointment of an appropriate institutional structure that would deal with consumer issues, as well as the allocation of horizontal and general competences in the field of consumer affairs, and the coordination of these tasks,

- ✓ The existence of consultative, general or industry structures (in areas such as food, children's toys, medicines, etc.) that are designed to represent consumer interests and ensure their participation in the decision-making process,
- ✓ Development of information and education programs aimed at expanding consumer knowledge,
- ✓ Existence of appeal mechanisms that allow effective enforcement of consumer claims.

In practice, this means a state action in the field of legislation, organization and support of projects that protect the life and health of market control, the judiciary, a means of redressing consumer claims, creation of institutional structure and consumer information and education.

The activities of the state must run on each of these levels simultaneously. Only integrated, coherent actions can create conditions for a safe market, where the consumer will meet his needs and achieve values. The right composition of activities ensures the implementation of each of the consumer's rights. And so the implementation of the right to security has huge importance to the consumer. It means launching measures and mechanisms excluding the threat condition not only of individual consumers, but also of the whole community. The basic tool for implementing this right are the European Union and national safety standards as well the obligation of each Member States to ensure compliance with them. Most of these norms are optional, although there are also imperative norms, in particular the so-called safety standards with which compliance is compulsory (Europe.ue, 2019). Failure to comply with these standards results in withdrawal of products from the market that threatens the life or health.

In order to implement the security postulate, the European Union countries also reach for other ways, such as informing consumers about the potential risks associated with the use of the product, adding instructions for safe use, establishing mutual obligations to inform the Community countries about the emergence of dangerous products and products, monitoring consumer accidents.

Recognizing the consumer's right to economic security, special attention is paid to the problem of product prices, consumer credit and interest rates as well as defining prohibited clauses in contracts with consumers. The government policy of a given country should guarantee consumers the opportunity to maximize the benefits of their economic resources and eliminate practices that violate the economic interest of consumers. The implementation of this policy is served by instruments such as the development of competition, concern for the appropriate structure of supply, demand and prices as well as information and consumer education (UOKiK, 2002).

The problem of the right to information results from the imbalance between the seller and the consumer. A professional operator has more knowledge about the products of the consumer than the consumer. There are also groups of products which due to their special economic importance require detailed and extended information to the consumer about his situation, related to the contract, e.g. a bank loan agreement or an insurance contract.

One of the forms of fulfilling the information requirement is a warning. The state introduces regulations governing information about product, which should be provided by the seller. A particular problem is the conclusion of contracts away from business premises and drop-off-selling. Specific duties also lie with food sellers. The implementation of the right to information also means that the consumer is not misled as to the identity of the company that has introduced the product on the market (BEUC, 2018).

In developed economies the media are involved in informing the consumer. They provide coverage of important state information tasks, including in the field of product information. The manifestation of this information are consumer programs and publications, among them tests evaluating individual products.

One of the ways to protect consumer's economic interests is the possibility to assert his rights. The most popular form of dealing with consumer complaints is primarily amicable bilateral settlement of the matter between the entrepreneur and the consumer. If it is not possible to reach such a conclusion, third parties are involved in the case. As a last resort, the dispute could be resolved in court (Strużycki, 2005).

As part of the implementation of the right to representation, consumers have the right to present their position in all consumer matters broadly understood, i.e. concerning individual and collective interests of the consumer community. They usually do this through voluntary consumer associations. The participation of consumer organizations in public life is most often manifested through the following procedures (Kieźel, 2007):

- ✓ Expressing opinions on draft normative acts and other documents concerning the rights and interests of consumers;
- ✓ Development and dissemination of consumer education programs;
- ✓ Performing product tests and publishing their results;
- ✓ Publishing of magazines, research studies, brochures and leaflets;
- ✓ Conducting free consumer advice and providing free consumer assistance in pursuing their claims;
- ✓ Participation in standardization work;
- ✓ Implementation of state tasks in the consumer protection child commissioned by central and local government administration bodies;
- ✓ Applying for subsidies from public funds for the implementation of tasks in the field of consumer protection.

Consumer organizations also have the power to bring actions and requests to initiate proceedings before the judicial and antitrust authorities. In some cases, these rights are used to protect individual consumers, in others to protect the interest of consumers as a whole.

It is necessary to underline that effective consumer policy is essential for an efficient and well-functioning European market (Smyczek & Kozak, 2013). Improved transparency and better informed transactions resulting from well designed and implemented consumer policy result not only in better solutions for consumers but also in improved market efficiency (Valant, 2015). Effective consumer protection is therefore an essential element of a properly functioning market. Its aim is to guarantee consumers rights versus merchants and, moreover, to provide enhanced protection for vulnerable consumers. The financial crisis has demonstrated that consumer protections rules have the potential to make markets fairer and improve the

quality of competition. Empowering consumers and effectively protecting their safety and economic interests have become essential goals of European policy.

The important role of consumer protection on European market is present in the Treaty on the Functioning of the European Union, as well in the Charter of Fundamental Rights of the European Union (European Commission, 2012). Article 114 TFEU is the legal basis for harmonization measures aimed at establishing the internal market. It emphasizes the objective of ensuring a high level of protection – including consumer protection – and keeping up with new developments based on scientific facts. Article 169 TFEU introduced a legal basis for a full range of actions at European level in the area of consumer protection. It stipulates that ‘in order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers as well as to promoting their right to information, education and to organize themselves in order to safeguard their interests’. It also provides for greater consideration to be given to consumer interests in other EU policies. In this respect, Article 169 strengthens Article 114 and broadens its remit beyond single market issues to include access to goods and services, access to the courts, the quality of public services, and certain aspects of nutrition, food, housing and health policy. It also states that EU measures must not prevent any Member State from maintaining or introducing more stringent protective measures as long as they are compatible with the Treaties. As a consequence, consumer policy is part of the Union’s strategic objective of improving the quality of life of its citizens. In addition to direct action to protect rights, the Union ensures that consumer interests are built into EU legislation in all relevant policy areas (European Commission, 2012).

In accordance with Article 12 TFEU, consumer protection requirements must be taken into account in defining and implementing other Union policies and activities. Article 38 of the Charter of Fundamental Rights of the European Union reinforces consumer protection by stating that Union policies must ensure a high level of consumer protection (European Commission, 2012).

Nowadays, the program of European Union action in the field of consumer policy consists, in particular, of the European Consumer Agenda and the Consumer Programme 2014–2020. This Agenda has several objectives (Regulation No 254, 2014):

- ✓ Promoting consumer safety: (such as the 2013 Product Safety and Market Surveillance Package, in particular through enhanced product identification and traceability, measures reinforcing safety in the food chain, and new rules in mid-2013 on the safety of cosmetic products);
- ✓ Enhancing knowledge of consumer rights: (interactive tools have been developed to inform, educate and help consumers fully participate in the single market, such as the Consumer Classroom);
- ✓ Strengthening the enforcement of consumer rules: (such as coordinated actions against breaches of EU consumer law in the form of checks of websites (sweeps) by networks of national consumer protection authorities; simple, fast and low-cost out-of-court procedures for consumers to seek redress available as a result of the Directive on Alternative Dispute Resolution and the Regulation on On-line Dispute Resolution (2013));
- ✓ Integrating consumer interests into key sectoral policies: (new legislation in sectors such as telecommunications, digital technologies, energy, transport and food, and new measures to increase transparency and access to retail financial services and facilitate switching of bank accounts);
- ✓ Empowerment: (the main overall objective of the EU Consumer Policy Strategy as described in the Commission working paper entitled ‘Consumer Empowerment in the EU’, aimed at empowering EU consumers through choice, information and awareness of consumer rights and means of redress).

The Consumer Agenda also identifies challenges, such as moving towards more sustainable consumption and addressing the specific needs of vulnerable consumers. The Consumer Programme 2014–2020 (EESC, 2012), need to support EU consumer policy in the years to come. It is aimed at helping consumers to enjoy their consumer rights and actively participate in the single market, thus supporting growth, innovation and meeting the objectives of Europe 2020.

In order to strengthen consumer confidence in the single market, the Single Market Act of April 2011 proposed a set of measures that included proposals on alternative dispute resolution, collective redress and passengers' rights. A new set of measures for adoption (the Single Market Act II) was presented by the Commission in October 2012. It focused on a revision of the general product safety and market surveillance rules and included a bank account initiative. The latter would ensure increased transparency and comparability regarding bank account fees and make switching bank accounts easy for consumers. The digital dimension of the Single Market was completed by the Digital Single Market (DSM) Strategy, adopted by the Commission on 6 May 2015, aimed, among other things, at providing better access for consumers to digital goods and services across Europe (*Commission, 2015*).

European institutions systematically monitor implementation of consumer policy in the Member States by means of the Consumer Conditions Scoreboard, that monitors national conditions for consumers in the areas of knowledge and trust, compliance and enforcement, complaints and dispute resolution. European institutions also permanently examine progress in the integration of the EU retail market based on the level of business-to-consumer cross-border transactions and the development of e-commerce, and by means of the Consumer Markets Scoreboard. This Scoreboard measure following areas (Regulation EU No 826, 2017):

- ✓ Consumer groups – the involvement of groups representing EU consumers' interests,
- ✓ Consumer education – the gradual inclusion of consumer education in primary and secondary school syllabuses, like the Europa Diary, which is a school diary aimed at students in secondary school; the teacher training schemes and support the creation of Master's degree courses on consumer policy, etc.,
- ✓ Consumer information – enhancing consumer confidence by providing information and advice on cross-border shopping and to handle consumer complaints, cross-border financial services, as well introduction practical guides for consumers, etc.

- ✓ Enforcement of consumer rights – the effective and correct enforcement of these rights, providing consumers with a framework to exchange information, elimination of unfair commercial practices, such as misleading advertising, package holidays or distance selling, etc.

Apart from the Consumer Markets Scoreboard, the European institutions monitor different sectors of economy in order to protect the health, safety, economic and legal interests of European consumers, wherever they live, travel or shop in the EU. EU provisions regulate both physical transactions and e-commerce, and contain rules of general applicability together with provisions targeting specific products, including drugs, genetically modified organisms, tobacco products, cosmetics, toys and explosives (*Commission, 2015*).

If we take in consideration the protection of consumers' health and safety, it is necessary to present the EU actions in the field of public health and tobacco, foodstuffs, medicinal products, as well General Product Safety System and market surveillance. Directive 2001/95/EC provides for a General Product Safety System whereby any consumer product put on the market, even if it is not covered by specific sector legislation, must meet certain standards relating to the provision of information to consumers, measures to avoid threats to safety, monitoring of product safety, and traceability. If a product poses a serious threat necessitating quick action, the relevant Member State must immediately inform the Commission via RAPEX, a system for the rapid exchange of information between the Member States and the Commission. Apart of it, the UE introduced special regulation according to the safety of cosmetic products, explosives for civilian use and toys. The Cosmetics Directive (Council Directive 76/768/EEC), together with all the amendments thereto and adaptations thereof, has been replaced by the Cosmetic Products Regulation (Regulation (EC) No 1223/2009). The regulation ensures the safety of cosmetic products, together with consumer protection, by providing for ingredient inventories and informative labelling. Most provisions of the new regulation were applicable by 11 July 2013. Safety requirements for explosives for civilian use and similar products (such as pyrotechnic articles) are set out in Directives 93/15/EEC, 2008/43/EC and 2004/57/EC, and in Decision 2004/388/EC, recently recast by the Explosives for Civil Uses Directive (2014/28/EU) and further by the Pyrotechnic Articles Directive (2013/29/EU). Toy safety re-

quirements (e.g. mechanical danger, toxicity and flammability, toys in food) are laid down in Directive 2009/48/EC; the European Committee for Standardization (CEN) revises and develops the relevant standards. And finally, the EU developed European surveillance and information exchange systems. Decisions 93/683 and 93/580 established the European Home and Leisure Accident Surveillance System (EHLASS) for the collection of data on accidents occurring in the home or during leisure activities, and the Community system for the exchange of information in respect of certain products which may jeopardize consumers' health or safety – excluding pharmaceuticals and products for trade use (European Parliament, 2018).

According to the protection of consumers' economic interests, the EU introduced regulation covering information society services, electronic commerce and electronic and cross-border payments. Directive 2000/31/EC (the E-Commerce Directive) covers the liability of providers (established in the EU) of online services (between enterprises, between enterprises and consumers, and those provided free to the recipient which are financed, for example, by advertising income or sponsoring), online electronic transactions (interactive telesales of goods and services and, in particular, online purchasing centers), and other online activities, such as the provision of news, database and financial services, professional services (e.g. those of solicitors, doctors, accountants and estate agents), entertainment services (video on demand), direct marketing and advertising services and internet access. Directive 97/5/EC on cross-border credit transfers and Regulation (EC) No 2560/2001 on cross-border payments ensures that charges for cross-border payments in euros (cross-border credit transfers, cross-border electronic payment transactions and cross-border cheques) are the same as those for payments made in that currency within a Member State (European Parliament, 2018).

Consumers' economic interests is also undertook in relation to TV without frontiers. Directive 89/552/EEC (as amended by Directive 2007/65/EC) ensures the free movement of broadcasting services while preserving certain public-interest objectives, such as cultural diversity, the right of reply, consumer protection and the protection of minors. Its provisions relate to, for example, advertisements for alcoholic beverages, tobacco and medicines, teleshopping, and programmes involving pornography or extreme violence. Events of major

importance for society are to be broadcast freely in unencoded form, even if exclusive rights have been purchased by pay-TV channels.

Because of the development of the Internet and new media the UE also developed regulations dedicated to distance selling contracts and contracts negotiated away from business premises, the sale of goods and guarantees, and unfair terms in contracts. As of 13 June 2014, the Consumer Rights Directive (2011/83/EU) of 25 October 2011 replaced Council Directive 85/577/EEC and Directive 97/7/EC laying down standard rules for the common aspects of distance and off-premises contracts. It also amended Council Directive 93/13/EEC on unfair contract terms and Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. It strengthened consumer rights, establishing rules on the information to be provided to consumers, regulating the right of withdrawal and harmonizing certain contractual provisions. Directive 2002/65/EC regulates the distance marketing of consumer financial services (European Parliament, 2018).

Another regulation related to all sectors of economy was related to unfair commercial practices, and comparative and misleading advertising. Directive 2005/29/EC on unfair commercial (business-to-consumer) practices prohibits misleading and aggressive practices, 'sharp practices' (such as pressure selling, misleading marketing and unfair advertising) and practices which use coercion as a means of selling (irrespective of the place of purchase or sale). It includes criteria for determining aggressive commercial practices (harassment, coercion and undue influence) and a 'blacklist' of unfair commercial practices. Directive 2006/114/EC concerning misleading and comparative advertising prohibits misleading advertisements. It also lays down the conditions under which comparative advertising is permitted. A Commission communication of 27 November 2012 (COM(2012) 0702) proposed a review of Directive 2006/114/EC to tackle the loopholes in the text and focus on the problem of misleading directory companies.

Very important regulations for consumer protection economic rights was regulation dedicated to liability for defective products and price indication. Directive 85/374/EEC, modified by Directive 99/34/EEC, establishes the principle of objective liability or liability without fault of the producer in cases of damage caused by a defective product. The injured consumer seeking

compensation needs to prove the damage, a defect in the product and a causal link, within three years. Directive 98/6/EC on unit prices obliges traders to indicate sale prices and prices per measurement unit in order to improve and simplify comparisons of price and quantity between products on the market. Directive 1999/44/EC establishes product guarantees for consumers by requiring traders selling consumer goods in the EU to remedy defects which existed at the time of delivery and which become apparent within two years (Your Europe, 2018).

And finally the UE also focuses on particular services which are very important for the consumer and could have huge influence on his/her behavior on market. Those services are as follows (EESC, 2012):

- ✓ Consumer credit – Directive 2008/48/EC aims at ensuring uniformity concerning protection of the rights enjoyed by the consumers on the single market. It provides for a comprehensible set of information to be given to consumers in good time before the contract is concluded and also as part of the credit agreement. Creditors have to use the same Standard European Consumer Credit Information, i.e. a form containing all relevant information about the contract, including the cost of credit and the annual percentage rate charged;
- ✓ Package holidays and timeshare properties – Directive (EU) 2015/2302 protects consumers' core rights when booking a package holiday (including the right to full information before booking, the right to transfer one's booking to another person if one cannot go oneself, and the right to a refund and repatriation if the organizer goes bankrupt) or other forms of combined travel, for example where a booking is made on a website for a self-chosen combination of a flight plus hotel or car rental. Directive 2008/122/EC on timeshare, long-term holiday products, resale and exchange covers the trader's obligation to provide information on the constituent parts of the contract, and the consumer's right to withdraw without any costs and without giving any reason, within 14 calendar days. The directive also contains a checklist of pre-contractual information, involving the use of standard forms available in all EU languages. On 12 March 2014 Parliament adopted the proposal for a directive on package travel and assisted travel arrangements, which will repeal Directive 90/314/EEC;

- ✓ Air transport – Regulations (EC) No 261/2004 and (EC) No 2027/97 (as amended) established common rules on compensation and assistance to passengers in the event of denied boarding, cancellation or long flight delays, and on air carrier liability (passenger and baggage) in the event of accident. Regulation (EEC) No 2299/89 (as amended) on computerized reservation systems (CRS) for air transport products established obligations for system vendors (to allow all carriers to participate on an equal basis) and for carriers (to communicate with equal care and timely information to all systems). Regulation (EEC) No 2409/92 introduced common criteria and procedures for establishing the air fares and air cargo rates charged by air carriers on air services within the Community. Regulation (EC) No 2320/2002 (as amended) introduced common rules in the field of civil aviation security standards following the terrorist attacks of 11 September 2001;
- ✓ Energy markets – The third package of EU energy market legislation (adopted in 2009) was enacted to improve the functioning of the internal energy market and resolve structural problems; it covered five main areas including increased transparency in retail markets in order to benefit consumers. Directive 2012/27/EU empowers energy consumers to better manage consumption by ensuring easy and free access to data on consumption through individual metering. Directive 2010/30/EU is intended to ensure that complex information on the energy consumption and performance of specified domestic appliances is presented in a clear and understandable format, allowing consumers to make informed purchasing decisions so that they can opt for the most efficient appliances. Within the EU's internal energy market, all EU citizens have the right to have their homes connected to energy networks and to choose freely any gas or electricity supplier offering services in their area.

The third group of consumers' rights is related with their legal interests. In this area the UE stipulates that those rights be protected by alternative dispute resolution procedures and online dispute resolution. Alternative dispute resolution (ADR) procedures are out-of-court settlement mechanisms that help consumers and traders solve conflicts, mostly through a third party, e.g. a mediator, arbitrator or ombudsman. Recommendation 98/257/EC, Decision 20/2004/EC and Council Resolution 2000/C 155/01 of

25 May 2000 lay down the principles to be followed in ADR proceedings, aimed at guaranteeing the individual consumer cheaper and faster remedies. Directive 98/27/EC on injunctions for the protection of consumers' interests (as amended) harmonizes existing EU and national law and, in order to protect the collective interests of consumers, introduces the 'action for injunctions', which can be opened at the competent national court level against infringements by commercial operators from other countries. Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes gives consumers the possibility of turning to quality alternative dispute resolution entities for all kinds of contractual dispute with businesses over an online or offline, domestic or cross-border purchase. Regulation (EU) No 524/2013 of 21 May 2013 on online dispute resolution enables EU consumers and traders to settle online disputes concerning domestic and cross-border purchases, through an EU-wide dispute resolution platform to which ADR bodies have been able to sign up since February 2016 (European Parliament, 2018).

The EU also introduced European judicial network in civil and commercial matters and obligation for national authorities to cooperate. Decision 2001/470/EC established a European judicial network to simplify the life of citizens facing cross-border litigation by improving the mechanisms for judicial cooperation between Member States in civil and commercial matters and providing them with practical information to facilitate their access to justice. Regulation (EC) No 2006/2004 established a network of national authorities responsible for the effective enforcement of EU consumer protection law and, since 29 December 2005, has obliged them to cooperate in guaranteeing the enforcement of EU law and, in the case of intra-EU infringements, to stop any infringement by means of appropriate legal instruments such as injunctions.

The European Union also focuses on increasing consumer awareness on market. One of action dedicated to this topic was The Consumer Rights Awareness Campaign, which took place from spring 2014 to early 2016, informing citizens of their rights under EU consumer law and pointing them to the right places where they could obtain advice and help should they have questions or problems, and was aimed at increasing general knowledge among traders and consumers of EU-wide consumer rights, that

stem mostly from national transposition of EU directives. Particular focus was on the Consumer Rights Directive, the Unfair Commercial Practices Directive, the Unfair Contract Terms Directive and the Consumer Sales and Guarantees Directive (European Parliament, 2018).

In conclusion, one should emphasize that pursuing consumer policy is not limited to the adoption of legal solutions and the establishment of institutions whose task is to enforce the adopted law. Consumer policy is an activity aimed at creating appropriate behaviours, fostering the rationality of their decisions and strengthening their position on the market. The education, information and promotion of active consumer attitudes serve this purpose. Such assumptions are subject to contemporary consumer policy programs.

7.3. Models of consumer protection on European market

In the face of emerging threats of the consumer rights and interests, actions aimed at their protection are necessary. The basic research problems related to the protection of consumer interests are primarily the premises for protection, pro-consumer law and the institutional structure of consumer protection. Legal instruments for consumer protection are the main basis for the creation and functioning of institutional forms that, in turn, trigger other security instruments, i.e.: economic, organizational and educational.

Consumer policy in the European Union countries is implemented by various government agencies. Many governmental institutions operate in EU countries, whose direct or indirect objective is to protect consumer interests (New, 2012). These institutions are difficult to classify, their activities concern the general issues of protection, a specific objective or problematic sphere or industry.

In implementing consumer policy, the state first uses its specialized institutions, such as parliament or justice. Depending on the situation in a given country, the degree of its development and tradition, the institutional structure may take different shapes and different forms (Kiežel, 1999).

The world's first public institution aiming to protect the consumer's interests was established in Sweden in 1809. The Parliament of Sweden then appointed a special parliamentary commissioner, the ombudsman. Initially, he/she had only to control the activities of the state administration and the army, but he/she quickly took over the issues of compliance with legal provisions in contacts between consumers and industry and trade. It should be added that ombudsman is a characteristic form of consumer protection in Sweden today. The first consumer activities in Europe to protect against exploitation and other unfair practices of producers and suppliers were taken especially by the growing consumer cooperatives. This movement was the most popular in the Great Britain and France (Kieźel, 2007).

It is worth emphasizing here that cooperatives have the greatest traditions and possibilities in terms of consumer protection. The cooperatives were the main inspirer of protection of consumer interests in countries with free market economy. Gradually in the context of the development of cooperatives, and often on its initiative, an independent consumer movement (Dietl, 1991) was distinguished. The basic assumption for the cooperative concept was that the needs of people can best be satisfied thanks to their cooperation and not thanks to the pursuit of profit maximization by entrepreneurs.

The first consumer cooperative was founded in Lyon in 1835. A common feature of this type of activity was the protection of the poorer population against the abuse of manufacturers and suppliers. It was also an attempt to become independent of producers that lower wages.

The first consumer organization in the world – Consumers League was founded in New York in 1891. Its aim was to promote stores that had hours of work convenient for consumers and adequate sanitary conditions. This form of helping consumers has become popular also in other American cities, which led to the creation in 1899 of the National Consumers League – the world's first consumer organization operating at the national level. This organizations began to be created later also in Europe, e.g. in 1910 in Paris, the Ligue des Consumateurs was created, as a federation of local associations dealing with consumer issues.

The new course of modern consumer protection was broadcast in 1962 by John F. Kennedy. He presented in the US Congress a bill on consumer rights – Consumer Bill of Right. This act has become a milestone in the development of consumer protection policy. Consumer rights were adopted by the International Organization of Consumer Associations – currently Consumer International and gradually implemented by all member organizations (Wos, Rachocka, Kasperek-Hoppe, 2004: 128–129).

The 60's of the XX century were also the beginning of introducing the issues of consumer policy to public institutions. In all economically developed countries, specialized state and local government organizations started to be created, whose task was at the beginning to support pro-consumer activities of non-governmental organizations. They quickly assumed the responsibilities of consumer policy.

The laws resulting from President Kennedy's initiative were adopted by the European Communities in 1975 on the initial EEC program on consumer protection and information. The formulation of consumer rights gave rise to the development of institutional forms whose main task was to protect consumers as weaker market participants (Dutkiewicz et al., 2000).

Currently, in the European Union, the legislative and judicial level is fulfilled by unimpeachable forms of action, performed by specialized bodies such as the parliament or other competent bodies in the field of legislative activities and courts in the area of justice (Groom, 2010).

Analysing institutional solutions in the European Union countries one can distinguish four models of institutional consumer protection systems (Kieźel, 2007):

- Ombudsman model – in which the crucial role in consumer protection is that of a single-person institution, a consumer advocate or ombudsman. He/she is administration-independent, appointed for a fixed term, usually by the Parliament. A consumer advocate is usually vested with specified powers.
- Administrative model – in which it is the administration that exercises the consumer policy. Consumer protection is usually performed by a single, specialized administrative body (usually situated in economic

ministries), which usually has a well-developed structure throughout the country.

- Court model – based on a highly advanced operation of courts, where common access and short procedures (the so called courts of petty matters, courts of small claims) guarantee quick compensation. This model also assumes the functioning of various public institutions executing and coordinating the consumer protection policy. The most characteristic feature for this model, however, is the presence of fast-operating courts, which only deal with deciding consumer litigation.
- German model – in this model the consumer policy is executed by means of strong consumer organizations. Consumer organizations are state-independent citizen associations that deal with the protection of buyer rights. They are present on the local and national level, and they have a joint representation in community institutions, which allows them to act on particular issues arising between buyers and vendors. They also fight to bring about changes in legal regulations that favor producers and traders.

There are many countries in the European Union where institutional systems of consumer protection are usually mixed, like Poland. However, the ombudsman model is dominant in Scandinavia; the administrative model, in France; and the court model is common in Anglo-Saxon countries.

In addition to the institutional approach model in the field of consumer protection, it is also worth paying attention to model approaches to consumer law in the European Union, as follows (Rokicka, 1996: 22–26):

- ✓ Consumer code model – e.g. in France, where there is a consumer code, which is a normative act of a comprehensive nature and containing regulations belonging to two basic branches of law, i.e. civil and administrative law. The advantage of this model is the concentration of the entirety of the law on consumer protection in one main legal act;
- ✓ The framework regulation model – found in countries that have passed consumer protection laws, is based on a formal premise, which is the adoption of the law on consumer protection;
- ✓ Distributed regulation model – is characterized by the absence of one act of consumer law, either in the form of a code or specific acts, and in-

stead there are numerous special acts regulating consumer protection issues.

Noteworthy is also the development of arbitration in the European Union, which can significantly relieve the common courts. In the Member States, amicable jurisdiction enjoys an enormous reputation. A special example of the significant role of arbitration courts in consumer protection is Spain, where the protection of consumer rights is enshrined in the Constitution. There is a public arbitration system organized by central and local administration and many industry arbitration systems that resolve disputes between consumers and companies operating in a specific industry.

In European countries there are the so-called alternative systems for out-of-court consumer dispute resolution – Alternative Dispute Resolution, which help those consumers and entrepreneurs who did not know how to reach an agreement in a dispute. The experience of European Union member states shows that alternative systems for out-of-court resolution of consumer disputes can bring beneficial results to both consumers and businesses. The main advantage of such a procedure is the low cost and short time to resolve the dispute. In order to help the consumer and the entrepreneur in reaching a settlement of the disputed case, the concept of a third party, i.e. an arbitrator, mediator or ombudsman, is used. Extrajudicial procedures are usually an alternative to court proceedings, they can also be supplementary or pre-litigation proceedings. Due to material properties, systems can be distinguished that settle disputes only in specific industries, e.g. banking, insurance, covering all consumer matters (Your Europe, 2018).

Out-of-court dispute resolution systems are most often created by agreements between business and consumer organizations. In Scandinavian countries, disputes in extrajudicial mode are settled by state institutions. There are also fundamental differences between individual systems as to the binding force of their ruling. In some cases, they take the form of recommendations, for example: the mediator or ombudsman model, in others binding force for the entrepreneur, e.g. arbitration, complaint committee, and still binding power for both parties, e.g. arbitration.

The main types of alternative systems of out-of-court resolution of consumer disputes occurring in European Union countries include (Kiezel, 2007):

- ✓ Mediation and conciliation – through mediation and conciliation, the parties try to reach a settlement with the participation of the third party. The mediator's task is to make it easier for the parties to find a satisfactory solution. He does not impose any solution, but he makes sure that the parties themselves reach a compromise. In the conciliation system, on the other hand, the third party, after hearing the arguments of both parties, tries to propose the best solution to the dispute for them. This proposal does not have to be binding on both parties. In the mediation and conciliation proceedings, the parties are not limited by the provisions of substantive law and procedural proceedings. The dispute resolution does not have to be based on a specific legal norm, but it may refer to the principles of honesty, equity, loyalty or decency, most often the settlement concluded in such proceedings requires additional court award of enforceability;
- ✓ Arbitration – this is a method of out-of-court dispute resolution most similar to the court procedure. The most important legal instrument regulating arbitration is the United Nations Convention of 1958 on the Recognition and Recognition of Foreign Arbitration. Arbitration is a type of procedure in which the parties elect one or more neutral persons whom they present the case in order to obtain a final and legally binding decision. It can be either one-off or institutionalized. In arbitration, each of the parties to the dispute chooses their own arbitrator, and they then appoint a super-arbitrator. The chosen composition is settled by the dispute based on previously agreed rules. Institutional arbitration usually operates on the basis of a professional organization dealing with arbitration. In some models of arbitration, it may be necessary to conduct additional enforcement proceedings before a common court;
- ✓ Complaint Commission – they can be organized by consumer organizations, business associations or economic institutions jointly or independently. They are based on universal law or solutions based on the principle of self-regulation. Soft-law. Complaint commissions are collective in nature with an equal representation of the consumer and business

community. Committee decisions are usually non-binding for the parties, although in some systems they are binding on the entrepreneur. Some complaint commissions may conduct consumer cases even without the consent of the entrepreneur. This decision, although not binding, is significant to his reputation;

- ✓ Ombudsman – a spokesperson who is a one-man institution established to resolve disputes between enterprises and consumers. A person with high professional qualifications is appointed for the position of ombudsman, enjoying high authority and good reputation. Usually, this is a type of alternative resolution of pre-litigation disputes, which is brought on the initiative of entrepreneurs from a particular industry and constitutes one of the instruments of self-regulation. Although the ombudsman is appointed by entrepreneurs, usually in his decisions is an independent body. The ombudsman is usually competent in the designated scope of matters and elaborates decisions based on legal regulations, the principle of equality or guidelines adopted in the industry. His decisions are usually binding on the entrepreneur or are not binding on any of the parties.

Significant differences in the systems of out-of-court dispute resolution in EU countries mean that they also differ in the binding force of their rulings. Not all non-judicial dispute resolution systems used in Europe give the same guarantee. Considering these premises and in order to make it easier for consumers to settle disputes within the EU single market in cross-border transactions, the European Commission has set minimum standards for out-of-court systems for the resolution of consumer disputes based on the principle of independence, transparency, effectiveness and respect of rights.

Conclusions

To sum up, we should emphasize that consumer policy is one of the priority for the European Union. Consumer protection has a long history in Europe. However diversification of the Member States convert also into different models of consumer policies and different institutional framework for consumer interest protection in those countries. Analysis of all those models shows advantages and limitation, and argue that the best model should have a mix character. That is why nowadays the EU tries to harmonize all aspects of consumer protection in Europe.

Within the last few years, the European Union has introduced many legislative changes which regulate the market as a whole and also regulate specific sectors of the market. The UE gives freedom to the Member States in the area of creation of various consumer protection.. However, observing the dynamic development of the markets across Europe, and taking into consideration the phenomenon of inter-penetration of various European submarkets, it would be worth considering the possibility of setting up one institution responsible for complex consumer protection. This institution should also stimulate consumers to increase knowledge about their rights on the market and make more rational decisions.

We should also underline the fact that more focus should be on consumer education and consumer inclusion onto the market. Nevertheless, any legal and institutional solutions should be applied according to the consumer's awareness of their existence on the market.

Consumer rights – national and European examples and practices

Marja Salonen

Introduction

The aim of the present chapter is to outline the acts with an effect on the EU citizens' consumer protection. In order to provide a picture of the consumer's position, it is not enough to present what the acts include, but the essential thing is how they are applied in practice. In addition to legislation and legal praxis, the chapter describes some legal principles behind legal practice that are applied to the relation between EU law and national law.

After the definition of the context, the chapter goes on to consider consumer protection from a practical perspective. This is done by dealing with the contractual relation between the consumer and the trader, and the related legal principles.

The concept of consumer is also discussed, and how this concept is interpreted. In practice, the question is about what level of knowledge and discretion is expected of the consumer.

The chapter ends in a presentation of the EU regulations related to trade in goods. Apart from the legislation currently in force, the chapter deals with the future policy definitions in EU legislation aimed at removing barriers to cross-border trade. This is examined by presenting the amended Directive Proposal of the European Commission on certain aspects concerning contracts for the sales of goods (COM, (2017) 637 final). By inspecting the

above mentioned Directive Proposal, we will get an idea of towards what direction the EU is developing its consumer legislation.

In this chapter, things are looked at from the viewpoint of a single member state or consumer, rather than from that of the EU or a company operating on the internal market.

As an introduction to the present chapter, the concept of Directive deepening its content will be dealt with. Directives are part of EU secondary legislation, as presented below. According to Viitanen and Wilhelmsson (2013) there are two kinds of directives. They may be fully harmonising or minimum directives, in which case the minimum level of protection concerning certain objectives is required in national legislation. In case the provisions are fully harmonising, also the maximum level of protection is prescribed by EU (Viitanen & Wilhelmsson, 2004, up-dated 2013: 1034). Klaus Viitanen, University Lecturer in Business Law at Helsinki university states that, after 2005, there has been a shift from minimum regulation towards maximum regulation (= full harmonisation) (Viitanen, 2017b). Full harmonisation may improve the consumers' opportunity to engage in cross-border trade, because the legislation is at the same level in all the member states. On the other hand, minimum regulation may give better protection to a consumer who lives in a member state with a high level of consumer protection. This is because minimum regulation allows the member states to grant consumers better rights through legislative action than stipulated in directives.

The chapter focuses on presenting the framework in which consumer disputes are solved. It is a large whole of acts, legal principles and legal cases, to which attention has to be paid, when a case is heard in a court of a member state. Moreover, the chapter attempts to foresee the future tendency of EU legislation, which can be seen in a concrete way when the above mentioned Directive Proposal (COM, (2017) 637) is presented.

8.1. Framework and general principles concerning consumer protection – different approaches

The central features of consumer protection in the European Union are registered in the legislation of the EU. At general level European Union law is divided on primary legislation and secondary legislation. Primary legislation is made of the Treaties, general principles and basic rights (Karttunen et al., 2015: 56).

Secondary legislation includes, above all, regulations, directives and decisions, which have been accepted in legislative procedure. The idea that primary legislation is on higher level than the secondary legislation is included in the above-mentioned classification (Ojanen, 2016: 38, 39, 41). If regulations, directives or decisions and primary legislation are in conflict, secondary legislation must give way to primary legislation. Raitio (2016) states that on the other hand, according to the EU legislation, we have to pay attention to the interaction of the Treaties, secondary legislation and the legal praxis (Raitio, 2016: 197–198).

As far as primary legislation is concerned, the legislative competence to the EU in the field of consumer protection was granted quite late. This breakthrough arrived in 1993 when the Maastricht Treaty came into force. In the Treaty there was, for the first time, a separate Title concerning Consumer Protection (Weatherill, 2013: 15). In the Treaty it is stated that the Community shall contribute to the attainment of a high level of consumer protection the Treaty on the Functioning of the European Union (TFEU, Article 169). At the level of the secondary legislation the Directive on Consumer Rights (2011/83/EU) (hereinafter “the Directive”) is one of the main sources of consumer protection regulations in EU. In this Directive there are detailed statutes of consumer protection concerning distance sale. The Directive aims at achieving a real business-to-consumer (B2C) internal market, striking the right balance between a high level of consumer protection and the competitiveness of enterprises. The Directive applies where there is a contract between a trader and a consumer for the trader to supply goods, digital content or services on digital internal market.

General legal principles enter into the primary legislation of the EU. These principles are mainly formed by the Court of Justice. If there has been gaps in written EU legislation, these principles have completed them. The principles have also been reasons for interpretation and validity of EU legislation (Ojanen, 2016: 40). Raitio (2013) divides these principles into two categories, principles governing the relation between the member states and the EU, on the one hand, and general principles, which are common to all member states and citizens' fundamental rights, on the other (Raitio, 2013: 224).

One example of the latter group is the EU Charter of Fundamental Rights. When the Treaty of Lisbon came into force in 2009, the Charter of Fundamental Rights of the European Union became a legally binding document and it gained the same value as the Treaties (Penttinen-Talus, 2017: 79–80).

Very important examples of the first group, principles concerning the relation between the EU- legislation and a national legislation, are:

1. The principle of primacy of European Union Law;
2. The principles of direct effect and direct applicability of European Union Law;
3. The principle of interpretation effect of European Union Law.

The first principle, the principle of primacy of European Union Law, is one of the most important general principles. According to Raitio(2016) if it is not possible to apply a national law in a way, which is equal to the European Union Law, the national law must give way to the European Union Law (Raitio, 2016: 223). This principle was confirmed by the Court of Justice for the first time as early as 1964. In a case *Costa vs. ENEL*(6/64) in the grounds of judgement the Court of Justice states that: "It follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its' special and original nature, be overridden by domestic legal provisions..." Therefore, the European Union Law supersedes the national law in case of conflict between the two.

The second principles, the principle of direct effect of European Union Law and the principle of direct applicability of the European Union Law, are separate principles. The latter principle is characteristic of a regulation (Penttinen, Talus, 2017: 57). It is stated in the article 288 of the Treaty on

the Functioning of the European Union that: “A regulation shall have general application. It shall be binding in its entirety and directly applicable in all member states.” In other words, no implementing act is needed to get the regulation in force in member states. According to Surakka, a directive is not directly applicable, but a specified goal of a directive has to be incorporated into the legal systems of member states (Surakka, 2011: 21).

When a provision of EU-legislation has a direct effect, a natural or an artificial person in a member state has the right to refer to that provision in a national court (Ojanen, 2016: 229). A directive has direct effect only if the content of it is detailed. In these situations the citizens of member states have a right to bring an action in national courts, although a member state has not yet enacted national legislation based on the directive. (Surakka, 2011: 21). It is also required that the time for implementation has expired and the directive has not been implemented at all or in a right way in the member state (Ojanen, 2016: 72).

The third principle, the principle of interpretation, means that the courts and authorities in member states apply and interpret the national legislation as far as possible according to the EU-legislation (Peltonen-Määttä:14). This principle affects all the European Union Law, but it is important especially for the directives which don't have a direct effect. (Raitio, 2016: 239–2010). A court in a member state, when deciding a case, can request a preliminary ruling from the European Union Court of Justice to make sure the consistent application and interpretation of the European Law (Ojanen, 2016: 190).

The principles outlined above are of importance when interpreting the relation between EU legislation and national legislation. Concerning consumer contracts there are also legal principles in order to balance contracts. In addition to these principles, the EU has also enacted legislation to protect the consumer when making contracts with the seller.

A consumer contract is a contract where the contracting parties are not equal relating to knowledge, ability to understand and wealth. This has been stated also in European Court practice. Example: In the case C-89/91, where the Bundesgerichtshof (Federal Court of Justice) asked for a preliminary ruling, the Court of Justice states: “...the Convention (of 27 September 1968) is inspired by the concern to protect *the consumer as the party deemed to be*

economically weaker and less experienced in legal matters than the other party to the contract...” (Shearson Lehman Hutton v TVB). According to the Court of Justice a consumer is considered a weaker contracting party, when the contracting parties are an enterprise and a consumer.

The Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (hereinafter the Directive) was enacted to improve the position of a consumer relation to a seller. The purpose of the Directive is to approximate the laws, regulations and administrative provisions of the member states relating to unfair terms in contracts concluded between a seller or supplier and a consumer (the Directive, article 1).

This is important in order to:

1. facilitate the establishment of the internal market and
2. to safeguard a consumer who acquires goods and services by agreement, to which legislation of another member state is applied. (the Directive: 1)

It is essential to remove unfair terms from those agreements.

The Council gave reasons for the necessity of the Directive telling that the laws of the member states relating to the terms of contract between the seller or supplier, on the one hand, and the consumer, on the other hand, show many differences. In particular, there are marked disparities in the laws of member states relating to unfair terms in consumer contracts. Consumers do not know the rules of law in other member states, which is why the lack of awareness may deter them from buying goods or services in another member state (the Directive: 1). The Directive states that “a contractual term, which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer” (the Directive, article 3).

Consumer contracts are often standard-form-contracts, which are pre-formulated by a seller or supplier. The Directive applies in particular only contractual terms which have not been individually negotiated.

In the case KKO 2015:60 (hereinafter “the Case”) the Finnish Supreme Court stated that according to the Court of Justice it is necessary that the

courts in the member states have a wide duty to examine unreasonable contract terms to secure consumer protection. This is important, because consumers do not always know their rights to appeal against unreasonable contract terms or they do not have enough money to take the case to a court.

In this Case, a Finnish consumer had made a contract with a supplier via the internet concerning consumption credit. The interest and also the penalty interest of the credit was 118.8%, which had been agreed in a standard-form-contract. The supplier took the Case to a District Court claiming the consumer to repay the credit with penalty interest of 118.8% for a term of 180 days and after that the penalty interest stated in the Finnish Interest Act. The consumer didn't respond to the claim. The District Court, and also the Court of Appeal, dismissed partly the supplier's claim, because the claim was unfounded for the part that the penalty interest was more than it is stated in the Finnish Interest Act.

The supplier appealed to the Supreme Court, which applied the Directive to the Case. According to Finnish legislation, it is not possible that a court takes into consideration the reasonableness of claim *ex officio* (=officially). Therefore because the defendant didn't refer to the unreasonableness of the interest, the court was not able to consider it.

According to the Directive, a court of a member state must *ex officio* examine, if the terms in a standard-form-contract are unreasonable in spite of the fact that the consumer has not required adjustment in Court. Article 6 of the Directive states: "Member states shall lay down that unfair terms used in contract concluded with a consumer by a seller or a supplier shall, as provided for under their national law, not be binding on the consumer..."

In the decision the Supreme Court stated that because in the Directive there is a duty to examine unreasonable contract terms, this statute of the Directive was an exception to the above-mentioned rule in Finnish legislation. That is why the court was able to investigate whether the interest was unreasonable or not, in spite of the fact that the consumer did not demand it.

According to Article 4 of the Directive, assessment of the unfair nature of the terms can relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, if the terms of the contract are in plain intelligible language. The Supreme Court considered

the interest of the credit “main subject of the contract” and decided that the terms of the contract were “not in plain intelligible language”. The Supreme Court considered the terms concerning penalty interest unreasonable and that is why they did not bind the consumer. The Court let the matter rest on the conclusion to which the lower court had come in its judgement.

Terms of contracts should be drafted in plain intelligible language and the consumer should actually be given an opportunity to examine all the terms before signing the contract (The Directive: 3). Because the consumer contracts are usually pre-formulated by a seller, it is important that the possibility to read the contract carefully before signing it, is given to the consumer.

The problem has been that when buying commodities or services at an online web store, consumers do not actually read the standard contract clauses. They only tick the “I accept the terms” box without reading the terms in question.

Raitio (2016) states that the principle *pacta sunt servanda* has been named one of the general legal principles by the European Court of Justice (Raitio, 2016: 261). According to these principles agreements are binding. Also standard contract clauses bind the consumer, even if they don't read them. It is enough that the consumer has been given the opportunity to become familiar with them before signing the contract.

Finally, one principle, which creates balance between the contracting parties in a standard-form-contract, is worth mentioning. If a term of a standard-form-contract is unclear, it can be interpreted by a court. Wilhelmsson (2008) states that concerning interpretation of standard-form-contracts, the interpretation with prejudice to the party who has drafted the contract should prevail (Wilhelmsson, 2008: 97) This principle is known as *in dubio contra stipulatorem* = the risk of an ambiguity is on the side of the party, which has drafted that contract clause.

According the Directive: “Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail.” (the Directive, article 5).

It is significant for the position of a consumer on the internal market which kinds of qualities are connected to a consumer.

In the light of court practice of the Court of Justice there is a presumption that *a consumer is well-informed and makes his/her decisions after careful consideration.*

Example: In the case C-465/98 the Oberlandesgericht Köln (Germany) requested a preliminary ruling from the European Court of Justice concerning interpretation of the Council Directive 79/112/EEC of 18 December 1978. The directive included rules about labelling, presentation and advertising of food-stuffs for sale to the ultimate consumer. The question here was whether the labelling, presentation and advertising of strawberry jam marketed by an Austrian company Adolf Darbo AG was in accordance with the above-mentioned directive. An association opposing anti-competitive practices in trade and industry (hereinafter “Verein”) claimed that the company should no longer use the word “naturrein” (naturally pure) for the jam.

The reasons for the claim of Verein was firstly, that because of the description “naturrein”, consumers do not expect to find pectin gelling agent in the jam. Secondly, the fruit, which was used in the jam grew out of the contaminated soil and air. Thirdly, there were residues of lead, cadmium and pesticide in the jam, which is why it cannot be described as “naturally pure”.

The Court of Justice stated that firstly, consumers whose purchasing decisions depend on the composition of the products in question, will read the list of ingredients. Under those circumstances, *“an average” consumer who is reasonably well-informed and reasonably observant and circumspect* could not be misled by the term “naturally pure” used on the label only because the jam contains pectin gelling agent whose presence is properly indicated on the list of ingredients.”

Secondly, it is not compulsory according to the directive to express the presence of residues of lead, cadmium and pesticide in the jam. Moreover, it is common knowledge that lead and cadmium are present in natural environment because of the pollution of air and aquatic environment.

Thirdly, the use of pesticides is one of the most usual means of fighting against the presence of harmful organisms on vegetables and agricultural products, even by individuals. Therefore, the fact that garden strawberries are grown “naturally” does not in any way mean that they are free of pesticide residues. As an answer to the above-mentioned claim the Court of

Justice states that it is not contrary to the directive to use the description “naturally pure” for a strawberry jam in question.

The regulation in the EU has taken the same position on the concept of consumer. According to the Unfair Commercial Practices Directive (2005/29/EC) (hereinafter “the Directive”) it is very important to protect all consumers from unfair commercial practices. Interpretation of the consumer in accordance with the Court of Justice is used in the Directive, which states that “this Directive *takes as benchmark the average consumer, who is reasonably well-informed and reasonably observant and circumspect*, taking into account social, cultural and linguistic factors, as interpreted by the Court of Justice...” (the Directive: 5). A consumer must meet very high standards according to the above-mentioned directive.

In the Directive there are also regulations concerning a weaker consumer. An example of a weaker consumer is a child, who is because of his age or credulity susceptible to marketing. If the commercial practice is specifically aimed at weaker consumers, for example children, they are protected by assessing the commercial practice from the perspective of the average member of that group (the Directive: 5)

When national court and authorities evaluate the concept “the average consumer”, they will have to exercise their own faculty of judgement, having regard to the case-law of the Court of Justice, to determine the typical reaction of the average consumer in a given case (the Directive: 5). Therefore the concept needs not to be the same in every member state.

For example, in Finland, a consumer is considered a person, who quickly glances at advertisements and is not a professional person (Peltonen-Määttä, 2015: 85) According to Peltonen-Määttä (2015), the decision of the Finnish Market Court (MT, 1983: 10) (hereinafter “the Decision”) is one example of this (Peltonen-Määttä, 2015: 85). In the Decision it was a question about a misleading advertisement. In a travel agency’s advertisement, the advantages of an in advance reservation, prevailed. In the case the restrictions concerning advantages were based on the day of departure, destination, resort and the age of traveller and this was told only in the travel brochure. According to the Decision of the Market Court *advertisements in newspapers are read usually superficially*. The consumer cannot be required

to notice that, on the basis of advertisement, there are restrictions concerning advantages in the in advance reservations, if in the advertisement there is only a request to explore the travel brochure.

Therefore, the requirements that “an average consumer” must meet are quite moderate in a Finnish court practice.

The features connected to the consumer may change in the future. Peltonen & Määttä (2015) state that research in the field of Behavioral Economics will probably have effects on the consumer regulation, although this research includes some problems, for example, they have to be approved in court praxis (Peltonen & Määttä, 2015: 31–36).

8.2. Sale of consumer goods on classical and digital market

Legal principles, court practice and legislation concerning consumer protection at general level and in practice were dealt with in the first subchapter. This second subchapter focuses on rules and general principles concerning sale of consumer goods in detail. In addition to this, future prospects will be taken into consideration.

According to the Treaty on the Functioning of the European Union (hereinafter TFEU) internal market covers an area without internal borders, which guarantees the free mobility of goods and services (TFEU Article 26). Between the member states, goods move duty-free and without any import or export restrictions. Traders sell goods in physical shops and nowadays more and more online, as well. Online shopping is increasingly common, and so questions related to e-commerce are essential from the perspective of consumer protection. When goods are bought online, the purchase is made through a distance contract.

According to the Directive on Consumer Rights 2011/83/EU (hereinafter “the Directive”) a distance contract is a contract made between the consumer and the trader without them being physically present at the same time. The transaction and the marketing preceding take place completely over email, telephone, or another distance means of communication. Typi-

cal distance sales include e-commerce, telemarketing, and mail-order sales (Finnish Consumer and Competition Authority, 2018, website). Only one or more means of distance communication, such as the internet, is used for making a contract (the Directive Article 2). The goods the distance contract relates to is defined as a tangible movable item. The concept of goods covers also digital content, which is supplied on a tangible medium such as CD or DVD. Examples of digital contents are e.g. digitally produced and supplied music, or a computer game (the Directive Item 19, article 2).

EU legislation aims at increasing the fluency of cross-border trade. It is also important to assure the protection of a consumer buying goods in another member state. Regarding this legislative work, we will next present principles related to the relationship between the EU and a member state. Unlike the principles presented in the first subchapter (See above 8.1) these principles are in written form; they are included in the Treaty on the European Union (hereinafter TEU).

The first major principle is the principle of subsidiarity. Based on it, the EU only acts in areas not falling within the realm of its exclusive competence only if and in the respect that member states are not able to sufficiently reach the objectives of the proposed action, which can be reached better at the EU level because of the extent or effects of the planned action (TEU 5 article).

The second principle influencing the action of the EU is the principle of proportionality, which implies that the content and form of the action by the EU shall not exceed what is necessary with a view to achieving the objectives of the Treaties (TEU 5 article).

In addition to these principles, the categories and areas of the Union competence are worth mentioning. According to the Treaty on the functioning of the European Union (TFEU), the competence of the EU varies between different areas. In the areas of above mentioned exclusive competence, the EU only acts as a legislator, while in the areas of shared competence both the EU and the member states can act as legislators. In certain areas and with the preconditions established in the Treaty, the EU only carries out functions supporting, harmonising or completing the action of the member states, without superseding the member states' action in the

areas in question (TFEU 2 Article). Consumer protection falls within the realm of shared competence, which, as mentioned above, means that legislative power is used by the member states and the EU alike.

If a consumer buys goods at a brick and mortar store, the contract made is binding in accordance with the *pacta sunt servanda* principle (See above subtitle 8.1). Changing one's mind is not a sufficient justification for annulling the contract. In order to do this, the consumer is required to consider the commodity well before entering into a sales contract. It is not necessary to allow the consumer to annul a contract without cause, because the consumer has the opportunity to check the goods and to compare their price-quality ratio of the goods with that of other similar goods before entering into a contract. Yet, the trader may voluntarily allow the consumer a right of exchange and/or a right to return of specified duration.

When a consumer buys goods through distance sales, the situation is completely different. The consumer does not see the goods before entering into a contract. According to the Directive on the Consumer's Rights (2011/83/EU) (hereinafter the Directive), distance sales is a two-stage event. Before entering into a distance agreement, the consumer shall be given a great deal of information, such as the main characteristics of the goods or services, the trader's identity and contact information, the total price of the goods or services including taxes, the conditions, time limit and procedures for the use of the right of withdrawal, if it exists, as well as the information that the consumer shall bear the cost of the return of the goods in case the distance contract is annulled (the Directive, article 6).

When a distance contract has been made, the confirmation of the contract concluded has to be delivered to the consumer by the trader. The confirmation includes all the information referred in the Article 6 (1) unless that information has already provided by the trader (the Directive, article 8).

Because the consumer is unable to check the goods before s/he has received them or to compare it with other similar goods, the consumer is entitled to withdraw from the contract by notifying the trader within 14 days. The consumer does not need any justification to withdrawal from a distance contract (the Directive, article 9).

Regarding the validity of a contract, legislation is different depending on if the consumer buys the goods in the traditional way or through distance sales. Instead, the assessment of whether the goods correspond to the contract or not does not depend on the place of purchase. According to the Directive (1999/44/EC) “on certain aspects of the sale of consumer goods and associated guarantees” (hereinafter “Defect Directive”), *the principle of conformity with the contract* may be considered to be common to all national legal traditions. Moreover, the judicial systems of the member states regard the seller as liable directly for the consumer for the conformity of the goods with the contract (Defect Directive). Consequently, the seller cannot thrust their liability for the consumer e.g. on the manufacturer. The 2nd Article of the Defect Directive defines conformity with the contract as follows:

✓ Conformity with the contract:

Consumer goods

- correspond to the seller’s description,
- suit the particular use of which the consumer informed the seller,
- suit the purpose of use for which they are usually used,
- quality and properties are of the same kind as goods of the same type usually have, taking into account the nature of the goods and the public statements about the particular properties of the goods made by seller or producer particularly in advertisements and on product labels.

According to the Directive, a defect does not exist if the consumer knew about the defect or if s/he should have known about it with reasonability, or if the defect is caused by substances or materials supplied by the consumer (Defect Directive, article 2).

The same legislation is also applied regarding liability for defects, irrespective of the place of purchase. The aim of the Defect Directive has been to secure the consumer’s rights in case the goods purchased are defective. The Directive defines the minimum level, and so the member states can at will secure better rights for consumers. According to the Article 3 of the Directive, the seller is liable for a defect present in goods at the moment of the delivery. If goods are defective, the consumer has the following legal remedies at their disposal.

- ✓ The consumer can claim:
 - repair or replacement of the goods,
 - reduction of price,
 - have the contract rescinded (not if the lack of conformity is minor).

The seller has the above described liability for defects in case the defect appears within two years of the delivery of the goods (Defect Directive, article 5). Since the Directive has made this possible, e.g. the Finnish legislation does not have the time limit in question.

On 9 December 2015, the European Commission published a directive proposal related to “certain aspects concerning contracts for the online and other distance sales of goods” (COM, (2015) 0635 final). The proposal included, among other things, provisions on the conformity of goods with contracts and remedies. The Commission amended the above proposal on 31 October 2017 by expanding its scope of application to cover also the traditional trade of goods (COM, (2017) 637 final), hereinafter “Directive Proposal”.

The original proposal aimed at eliminating such barriers to cross-border trade that are caused by differences between national contract laws (COM, (2015) 0635 final). Furthermore, the amended proposal has the same goals, but its scope expanded to cover all kinds of trade, irrespective of where the goods had been bought from. The Commission states that juridical uncertainty resulting from differences in the provisions of contract law also affects traditional cross-border trade. The Commission justifies its amendment proposal by the increasing tendency to sell product through both traditional and e-commerce. The amendment proposal reacts to the development of the market and takes both consumers’ and companies’ needs into account (Directive Proposal: 4).

In the Directive Proposal, the Commission takes a stand on the fulfilment of the above-mentioned subsidiarity and proportionality principles, regulated by the Treaty on European Union (TEU).

The Commission justifies the conformity of the Directive Proposal with the subsidiarity principle by the fact that since the Defect Directive (1999/44/EC) only defines the minimum level, it may have been executed in different ways by the member states. It follows that the member states cannot eliminate

barriers related to the rules of consumer laws and, through this, promote the performance of the internal market (Directive Proposal: 7).

Regarding the proportionality principle, the Commission states that only such regulations on consumers' rights that are essential in cross-border trade would be harmonised. Consequently, according to the Commission, "The modified proposal complies with the principle of proportionality as set out in Article 5 of the Treaty on European Union because the proposal will not go beyond what is necessary for the achievement of the objectives" (Directive Proposal: 7).

According to the Directive Proposal, the Defect Directive, which, as presented above, sets the minimum level, would be repealed. The Directive Proposal is fully harmonising, in which case, in the future, the provisions on liability for defects would be of the same level in all the member states.

As stated above (see subtitle 8.2), the criterion for goods being defective or not is the conformity of the goods with the contract. The Directive Proposal aims at harmonising the rules governing *the definition of conformity with a contract* in the different member states. The key requirements for conformity with a contract would, firstly, be the things mentioned in the contract including the pre-contractual information about the goods given to the consumer by the trader. Secondly, conformity with a contract would also include certain objective requirements, which are usually expected for the goods, such as standard quality and properties. Thirdly, lack of conformity can be a result from an incorrect installation of the goods if the reason for it is in sphere of the seller. Fourthly, goods would not conform to a contract in case it presents a judicial error (Directive Proposal Items 19–21). This means that some third-party's right, such as the right of possession or of lien, is directed at the goods. In the Directive Proposal, conformity with a contract is evaluated based on the date of transfer of liability for risk (Directive Proposal Item 24).

In case the goods do not conform to the contract, it is important that the consumer dispose of sufficient legal remedies to repair the defect. For this, in its Directive Proposal, the Commission aims at introducing a consistent practice for the use of legal remedies in the internal market. In case goods are defective, the consumer can primarily demand the correction of the defect or the replacement of the goods by goods without defects. Should the

seller not repair the defect or replace the goods within a reasonable period, the consumer could demand a price reduction or annulment of sale. The sale could be annulled even in the case of a minor defect. According to the Commission, this would encourage the trader to correct defects swiftly (Directive Proposal Items 26–29).

According to the Directive Proposal, the consumer may refer to a defect in goods if the defect emerges within two years after the transfer of the goods. Therefore, within the first two years the consumer need not prove that a lack of conformity existed on the date of transfer of liability for risk. It is enough to prove that there is the lack of conformity of the goods (Directive Proposal Items 26, 32). Since the directive would be fully harmonising, the member states could not give consumers better legal protection in the future.

The Commission's decision to expand the original Directive Proposal to cover traditional trade has aroused criticism. Klaus Viitanen, university lecturer in Commercial Law at the University of Helsinki, criticises the expansion of the scope of the Directive Proposal by stating that "In its legislative work, the Union should concentrate on matters such as international e-commerce and its regulation, which have a clear and significant EU dimension." Viitanen states that consumer protection falls within shared competence, in which case the EU should not, in addition to cross-border trade, fully harmonise also traditional trade inside the member states. In an article in the *Helsingin Sanomat* of 23 December 2017, Viitanen regarded as a drawback the total omission of the seller's liability for damages indemnification system, although "it is one of the key sanctions of a breach of contract." Moreover, he criticizes the short duration of the seller's liability for defects. According to the Directive Proposal, the seller's liability for defects would end as early as two years from the sale. According to Viitanen (2017a) it is ecologically unsustainable if consumer durables only need to last for two years, after which manufactures are no longer liable for their products (Viitanen, 2017a).

Conclusion

The present chapter has dealt with consumer agreements and problems related to them. Since the consumer is a weaker contracting party, in terms of knowledge and understanding as well as their economic position, it is important that their rights are secured through legislation, as well as through legal practice and principles.

Attention must also be paid to the content of the consumer agreements. There are often long and complicated standard agreements, drafted by the trader. They bind the consumer, who has had an opportunity to peruse them before signing the agreement. Standard terms should be shorter and clearer in order for consumers to familiarize themselves with the terms and understand what they are binding themselves to.

The securing of the consumer's rights also includes defining what kind of understanding and level of knowledge are demanded of the consumer. It seems that the consumer is supposed to be well-informed and make his/her decisions after careful consideration. This requires intelligible and easily accessible information about the consumer's rights and obligations. But are the consumers always rational when buying commodities? Or are there also other things besides reason which effect their purchasing decisions? It will be interesting to see whether and how Behavioural Economics will influence the assessment of the concept of the average consumer in the EU in the future.

Consumers must cope with the digital and increasingly complicated internal market. The EU legislation and the rulings of the Court of Justice are of key importance for the protection of an individual consumer; especially, because it looks like the EU is heading towards fully harmonising legislation. If this development continues, it means that all the EU citizens will be granted consumer protection of a similar standard.

Chapter IX

Consumer rights understanding on the services market

Justyna Matysiewicz & Katarzyna Tomecka

Introduction

Consumers are very important participants on the service market, generating high demand for its goods and services. However, in many cases, as non-professional clients, they require special legal protection, securing their interests in contractual relations with service institutions. The European Commission, as well as the national legislation of the Member States of the European Union seek to provide it for consumers, although it manages to varying degrees of success (Szustak, 2014).

The aim of the chapter is to present the key elements of service and service market characteristics together with the consumer protection system, combined with the indication of the EU and the national legal basis, as a way to increase customer awareness in service sector. In the chapter, different examples of the service markets are provided.

9.1. Characteristic of services market and service as a product – threats to consumer

One of the main goals and the most important pillars of the European Union is a unique market promoting four freedoms: free movement of people, free movement of goods, free movement of services and free movement of capital. Free movement of goods and services has contributed to the development of a unique market from which both the citizens and the business sector benefit daily.

The EU unique market, with the population of over 500 million people, makes buying and selling goods and services easier and enables consumers to choose from a wide range of products and services. It also creates new challenges and threats. One of them is a challenge of the consumer protection and customer awareness about its customer rights.

In that part of that chapter the specifics of the service as a product and the overall characteristics of the service market will be introduced. Knowledge about services itself is a first step towards increasing customer awareness and educating customers about their legal rights.

To discuss the services as a product on the market and how can be perceived by the consumers the starting point should be connected with the basic understanding of its specifics. The main characteristics of the services make them unique and quite differently perceived then physical goods. They also can cause some confusion and misunderstanding among consumer. Understanding the services and its characteristic is a first step to build the customer awareness as a part of overall customer protection system.

A service may be described as any activity or benefit that a supplier offers a consumer that is usually intangible and does not result in the ownership of anything. The provision of services may or may not be tied to a physical product. It means the customer in the same time can buy “two or more things” the service/s and the product/s.

According to the International Standard Industrial Classification (ISIC), services include the following: wholesale and retail trade; restaurants and hotels; transport, storage and communications; financial, insure, real estate and business services; personal, community and social services; govern-

ment services. The key assets managed by the firm in each of the above businesses are a system for people and machines or equipment. These systems are developed by the firm over many years and are the result of investment in human, financial and physical resources. The unique blend of these assets in a system gives the services firm its differentiated competitive advantage (Hollesen, 2007: 228).

In the literature, we can identify two approaches that capture the essence of services (Lovelock, 2001):

- ✓ A service is an act or performance offered by one party to another. Although the process may be tied to a physical product, the performance is essentially intangible and does not normally result in ownership of any of the production.
- ✓ Services are economic activities that create value and provide benefits for consumers at specific times and places as a result of bringing about a desired change in or on behalf of the recipient of the service.

More amusingly, services have been described as “something that may be bought and sold, but which cannot be dropped on your foot”.

Nowadays it is difficult to think of firms/organisations that are not involved with services in some form or other (Baron & Hariss, 2003: 18):

- ✓ Some organisations declare the whole business to be service business, for example IT, accounting, health or education.
- ✓ Some organisations declare services to be part of their business; many organisations have service providers within their business. For example multiple retailers rely on administrative services and technical services from within their own organisation.
- ✓ Some organisations declare services as an augmentation of manufactured goods which is seen extensively with sale of traditional manufactured goods. For example, a new car comes with warranties, free delivery, and so on.

Consumer in process of buying the service and the organisations selling the service must consider five main service characteristics: intangibility, inseparability, variability, perishability and lack of ownership. It means that

all five of them in the same time influence on customer and his behaviour. It will be look at each of these characteristics in the following sections:

- ✓ **Intangibility.** Pure services, such as a consultancy session with a psychiatrist, cannot be touched. Nor can travel on a train or aeroplane, although, the train and aeroplane are themselves tangible. Nor can you touch the “atmosphere” on a train or aeroplane, nor can you touch conversation with fellow passengers. So, it can be said that service intangibility means that services cannot be readily displayed, so cannot be seen, tasted, felt, heard or smelled before they are bought. The intangibility characteristic of services often increases risk for the purchaser. Some services are perceived to be riskier than others depending on whether they are high in (Baron & Hariss, 2003: 20): Because services offerings lack tangible characteristics that the buyer can evaluate before purchase, uncertainty is increased. To reduce uncertainty, buyers look for signs of service quality. They draw conclusions about quality from the place, people, equipment, communication material, and price that they see. Therefore, the task of the service provider is to make the service tangible in one or more ways (Kotler et al., 1999).
- ✓ **Inseparability:** Inseparability refers to the notion that, in many service operations, production and consumption cannot be separated; that is, a service is to a great extent consumed at the same time as it is produced. For example, although the hairdresser may prepare in advance to carry out the service, most of the hairdressing service is produced simultaneously as the customer consumes the service (Baron & Hariss, 2003: 19). Because the customer is also present as the service is produced, provider-client interaction is a special feature of service marketing. Both the provider and the client affect the service outcome. If the audience composes ardent fans of the pop group, they are likely to be ecstatic with the service. The teacher, who has taught well and is liked by her students, will have effectively satisfied her clients. It is important for service staff to be trained to interact well with client.

A second feature of the inseparability of service is that other customers are also present or involved. The concert audience, students in the class, other passengers in a train, and customers in a restaurant, all are present while an individual consumer is consuming the service. Their

behaviour can determine the satisfaction that the service delivers to the individual customers. For example, an unruly crowd in the restaurant would disenchant other customers dining there and reduce satisfaction. The implication for management would be to ensure at all times that customers involved in the service do not interfere with each other's satisfaction (Kotler et al., 1999).

- ✓ **Variability:** Organisation providing services to consumers know that no two services provisions are exactly the same, whether the attempts to standardise them. As services involve people in production and consumption, there is considerable potential for variability. Service variability means that the quality of services depends on who provides them, as well as when, where and how they are provided (Kotler et al., 1999). A concert performed by a group on two nights may differ in slight ways because it is very difficult to standardise every dance move. Generally systems and procedures are put into place to make sure the service provided is consistent all the time, training in service organisations is essential for this, however in saying this there will always be subtle differences.
- ✓ **Perishability.** This refers to the fact that, unlike physical goods, services cannot be stored for later sale or use. The perishability of services is not a problem when demand is steady. For example public transportation companies have to own much more equipment because of rush-hour demand than they would if demand were even through-out the day (Kotler et al., 1999).
- ✓ **Lack of ownership.** When customers buy physical goods, such as cars and computers, they have personal access to the product for unlimited time. They actually own the product. They can even sell it when they no longer wish to own it. In contrast, service products lack that quality of ownership. The service consumer often has access to the service for a limited time (Kotler et al., 1999). For example when buying a ticket to the USA the service lasts maybe 10 hours each way, but consumers want and expect excellent service for that time. Because you can measure the duration of the service consumers become more demanding of it.

If the consumer is involved in more knowledge demanding markets, like healthcare, legal or design services for ex., the additional characteristics can be identify (Løwendahl, 2007: 22):

- ✓ Asymmetric information. The healthcare practitioner who provides healthcare typically has more knowledge of the service being provided than the patient who is the consumer. The patient's lack of expertise means he or she is ill-equipped to judge the quality of health care. To make matters worse, quality of health care is notoriously difficult to measure and opinions amongst health care practitioners themselves may vary about what the best quality healthcare is. When customers buy physical goods, such as cars and computers, can find much easier to comer the products and its quality.
- ✓ Personnel qualification and knowledge. It's one of the most important characteristics of the professional services. Legal services are highly knowledge intensive, delivered by people with higher education, and frequently closely linked to scientific knowledge development within the legal area of expertise. Customer must trust that service provider has that knowledge.
- ✓ Involve a high degree of customization. Customization deals with the efficient adaptation of professional services to customer needs and the active co-design of the customer. Customization is an interaction process between the customer and the provider.
- ✓ Involve a high degree of discretionary effort and personal judgment.
- ✓ Delivered within the constraints of professional norms of conduct. The delivery of the professional service includes setting customer needs higher than the profits and respecting the limits of professional expertise.

Many service organizations offer a variety of services and products to their consumers. In many cases consumer can have the strong difficulty to understand the structure of the offer which refers to the combination of good, services, and even ideas it offers (Thomas, 2004: 197). Together with the effect of service characteristics can confuse, mislead or even make the consumer receptive to illegal marketing practices. From other side luck of ability to understand how services work can lead to poor services quality,

excessive creation of demand for services, inability to complain about services and compensation.

The EU services market is an important part of the EU Internal Market, where many administrative and regulatory barriers still exist. A breakthrough in the process of eliminating those barriers and liberalizing access to markets for service enterprises was supposed to be connected with the implementation of the Services Directive in 2009 (Directive 2006/123). With regard to the elimination of barriers, the directive has primarily forced the Member States to simplify procedures related to starting and running a service activity and the introduction of single points of contact. Additionally, to prevent introducing the new barriers instead of the ones abolished by the directive, provisions of the directive obliged EU Member States not to introduce their own requirements / procedures, if they are not necessary in all activities targeted at service providers and recipients (Stefaniak, 2016).

However, neither the implementation of the services directive nor the suggestion of further ones strategies or programs did not lead to the completion of the single market services in the EU, which is still subject to restrictions resulting primarily from differences in the applied national regulations (Ambroziak, 2013). Currently, the Commission of the European Union is implementing a new internal market strategy, of which it is an element presented at the beginning of 2017, the so-called “Service package”. Elimination of still functioning barriers on the EU services market is mainly aimed also at increasing the availability of services for European consumer.

The service market includes both consumer services (so-called services to the public) and services purchased by institutions, in particular business entities (production and investment services). The service market is very diverse. The services market includes the government sector (courts, employment agencies, hospitals, police, armed forces, fire brigades, post offices and schools), non-profit private sector (museums, churches, colleges, foundations), a significant part of the business sector (lines airports, banks, hotels, insurance companies, law offices, etc.). Service providers are also employees of the production sector, such as IT specialists, accountants and lawyers.

In 2017 service industries represent more than two-thirds of all economic activity in Europe; they have accounted on average for more than 75% of the growth rate of the last decade. However, taking into consideration the same time span, data shows European economies have grown more slowly for instance than in the United States. The service trade liberalization as well as effective forms of consumer support on this market may make it more dynamic.

Consumer awareness and expectations in relation to the products offered in the EU is growing. Consumers become the experts with significant knowledge about the product and service itself. The situation is different if they are asked about consumer rights, and institutional protection.

The problem is particular important for European market due to the number of consumer, and different protection systems. It is one of the priority of European Commission is to increase the customer rights awareness. The good example is the Consumer Rights Awareness Campaign. It was said that *... consumers should be aware of their rights under EU law so they can use them every day, when shopping online or on the high street.* That's why the European Commission has organised a campaign informing citizens of their rights under EU consumer law and pointing them to the right places where they can get advice and help in case of questions or problems.

The Consumer Rights Awareness Campaign, which was started in spring 2014, aimed to increase the general knowledge among traders and consumers of EU-wide consumer rights that stem mostly from national transposition of EU directives. Particular focus is on the Consumer Rights Directive, the Unfair Commercial Practices Directive, the Unfair Contract Terms Directive and the Consumer Sales and Guarantees Directive (more information: https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=30149).

9.2. Institutional and legal dimensions of consumer protection on the European services market

There are two separate frameworks that could be distinguished when analyzing institutional consumer protection schemes. The first framework covers the European Union decision making bodies that are involved with consumer protection: the European Parliament, the European Commission and Council of the European Union. Those bodies, directly connected with the legal customer protection, create not only consumer regulations and laws, but also different legal standards, strategies and agendas that shape the customer policy in the European Union. The second framework involves European and international non-government consumer organizations and scientific committees that aim to promote and protect the interests of all the customers in the European Union (Malczyńska-Biały, 2017: 191–192). The both customer protection schemes are also dedicated to the services markets.

The second scheme of institutional consumer protection in the European Union is represented by independent, non-governmental consumer organizations and scientific committees. Their informational, advisory, educational and promotional forms of activities that include large number of different initiatives and campaigns imply the necessity of setting the relevant legal solutions and regulations. The main aim of customer organizations is to represent consumers from the European Union, make them aware of wide range of customer rights, and most importantly to influence the regular formulation, review and development of European Union policies and regulations, which effectively promote, defend and realize consumers' interests in daily life (Mącznyńska-Biały, 2017: 194).

European Commission works very closely with various customer organizations, which are federations on national bodies from all over the European Union. There are four most influential federations that cooperate with different decision making bodies:

1. European Association for Coordinating Consumer Representation in Standardization (ANEC).
2. European Consumers' Organization (BEUC),
3. Confederation of Family Organizations in the European Union (COFACE).

4. European Community of Consumer Cooperatives (EUROCOOP) (European and international consumer organizations, 2018).

European Association for Coordinating Consumer Representation in Standardization (ANEC)

Located in Brussels and supported financially by the European Union and EFTA, ANEC is a full member of the European Consumer Consultative Group (ECCG) and represents the consumer interests in the process of creation of technical standards and guidelines. It aims at representing, promoting and defending the interests of every single consumer in the work of the main European Standard Organizations: *European Telecommunications Standards Institute (ETSI)* European Committee for Standardization (CEN), European Committee for Electrotechnical Standardization (CENELEC) and other similar institutions, whose specifications, technical standards and in-service technology might directly or indirectly affect European consumers. ANEC specially focuses on the standards that are developed for supporting the implementation of European public policies and laws. Development and application of standards including market surveillance and enforcement, accreditation and conformity assessment schemes are the primary areas of ANEC interest.

ANEC seeks to influence the development, revision and implementation of European Union laws pertained to the product and services, especially of the ones related to standards. It also ensures that all products and services are safe, environment friendly, interoperable and accessible to every consumer. Currently it focuses its activities in eight working areas identified by its General Assembly:

1. Child safety;
2. Design for all and accessibility;
3. Domestic appliances;
4. Digital society;
5. Innovation;
6. Services;

7. Sustainability and chemicals;
8. Traffic safety.

With regard to *Services* ANEC intends to achieve the policy and legislative framework for the quality and safety of services provided that guarantees a transparent and consistent approach in all market sectors, ensuring at the same time information provision, safety, accessibility and usability available for every single European consumers. By participating in the CEN Strategic Advisory Group on Services (SAGS), ANEC ensures that the main areas of consumer concerns are addressed in both strategical and political discussions related to services standardization and regulation. It also makes sure that the strategy, which covers not only the major trends that affect services, but also service standardization challenges, addresses the European standardization in all services. In addition ANEC proposes a framework for typology of services standards and specifies different criteria for identifying sectors, where services could potentially be standardized. ANEC actively works on various aspects of different services including horizontal service issues, health, care and support services, general interest services such as postal and financial services, tourism, and sport and leisure activities. It intends to reflect safety, hygiene, complains handling and redress procedures, customer satisfaction, personnel competence, information provision and accessibility in European Union's standards and regulations (ANEC The customers' voice in standardization, 2017).

Confederation of Family Organizations in the EU (COFACE)

Located in Brussels, COFAC is a European Network of family organizations. It aims to build European quality family-friendly regional and national policies and regulations. It “works towards a family friendly environment, enabling families and their members to benefit from sufficient financial resources, available quality services and adequate time arrangements in order to live and enjoy their family life in dignity and harmony”. The main seven areas of interest for COFACE are:

1. Education – including issues related to informal education, inclusive education, early childhood care and education;

2. Migration – including issues related to family reunification and transitional families;
3. Work-life balance – including issues related to services, working arrangements and gender equality;
4. Customers – including issues related to customer protection, financial inclusion, public health and suitability development;
5. Digitalization – including issues related to data protection and privacy, online safety and digital future;
6. Disability – including issues related to disabled, other dependent persons and their families, as well as to deinstitutionalization;
7. Europe – including issues related to family and social policies.

Work-life balance and *Customer* are the key areas of COFACE activities. Policies and regulations facilitating a satisfactory combination of work and family life are the principle goals of this organization's actions as families can benefit from adequate time arrangements, available sufficient financial resources, and provision of accessible and affordable quality services in order to better live their family life in dignity, harmony and safety. COFACE actions aim to promote and defend the interests of families as individual consumers of products and services and help them to better understand their rights and responsibilities in those consumer areas that have a significant impact on their service (social, health and education) inclusion. By regular monitoring various EU legislation, COFACE ensures that families interests are represented in the EU arena and also tries to work in close partnership with industry representatives in the industries such as finance industry, healthcare industry, education industry, advertising industry, etc. (COFACE Family Europe, 2016).

European Consumers' Organization (BEUC)

A nonprofit organization located in Brussels, European Consumers' Organization (French: *Bureau Européen des Unions de Consommateurs*, BEUC) represents at the European level 43 independent national consumer organizations from 32 European countries. By investigating European Un-

ion decisions and developments that might affect customers, BEUC effectively promotes and defends the interest of all European customers in the development, implementation and evaluation of European Union policies not only with European Union institutions but also with other organizations. It does not deal with any consumers' complaints as this is the main duty of its members as national consumer organizations. To carry out its activities organization receives a grant from the European Union in addition to the funding from its members and funding from other specific projects in which it participates.

BEUC as one of the first lobbying organizations that was influencing the EU legislators' decision making process. Nowadays it focuses on nine main areas: consumer rights and enforcement, digital rights, financial services, sustainability, energy, safety, health, food and trade policy. Its activities in consumer rights covers wide range of topics including unfair commercial practices, unfair contract terms, transport and passenger rights, product liability, legal guarantee rights and refit of European Union laws related to consumer rights, while customer empowerment involves laws enforcement, competition, Alternative Dispute Resolution and collective redress.

BEUC actively supports the empowerment of all European customers through competitive markets but completed by health and safety safeguards. Only reliable, healthy and safe products and services, which do not put in risk consumers health, future generations or the environment should be offered on the European Union markets and regulatory measures should protect the economic and legal of consumers where they cannot be empowered (BEUC The European Consumer Organization, 2018).

The European Community of Consumer Cooperatives (Euro Coop)

The voice of the co-operative retailers in Europe, The European Community of Consumer Cooperatives (Euro Coop) is an international nongovernmental organization that brings together the national associations of local and regional consumer cooperatives in 20 European countries. The primary responsibility of Euro Coop is to represent, uphold and improve the structure and ethics of consumer co-operative enterprises at European level. This could be achieved by Euro Coop participation in different fora's for

example in the European Consumer Consultative Group ECCG or in various working groups, advisory groups, and platforms within the European Commission. The main objectives of the organization are to promote the interests of its members-consumers to the European institutions, inform member organizations about specific European policies, initiatives and actions relevant to their activities, facilitate the exchange of information among member organizations, defend a truly ethical and responsible approach to consumer issues, sustainability and food at European level. Organization focuses on the following policy areas:

1. Consumer policy;
2. Food policy;
3. Enterprise and food retail policy;
4. Environment and ethical policy that includes climate change, energy and fair trade;
5. Cooperative distinctiveness that includes competition, internal market and Corporate Social Responsibility.

In order to exchange information and provide direction for those five policy areas organization members participate in three working groups: cooperative identity, food retail and sustainability.

Based on the agreement between the International Co-operative Alliance (ICA) and The European Community of Consumer Cooperatives, the Euro Coop provides the secretariat to the work of Consumer Co-operatives Worldwide (CCW) (EURO COOP The European Community of Consumer Cooperatives, 2016).

The European Consumer Consultative Group (ECCG)

The European Consumer Consultative Group (ECCG) is a discussion group on all issues related to consumer interests established by European Commission in 1973. It is composed of European customer organizations and represents the interests of consumers at the European Commission. ECCG assists the European Commission in the preparation of legislative proposals and policy initiatives by guiding, issuing opinions and providing

expert advices on issues related to the conception, implementation and evaluation of the policies and activities on the subject of protection and information of European consumers. It also informs the European Commission of latest developments in consumer policies in European Union member states and acts as primary source of information on community actions for all national consumer organizations. The ECCG opinions do not reflect opinions of the European Commission or any of its services.

The group meets three to four times a year in Brussels, Belgium and consists of one representative of national consumer organization per each country supported by the alternate, one member from European consumer organizations: the European Consumer Voice in Standardisation (ANEC) and le Bureau Européen des Unions de Consommateurs (BEUC), two associated members from the Compagnie Française d'Assurance (COFACE) and the European Community of Consumer Co-operatives (EUROCOOP) and Iceland and Norway as two EEA observers (The European Consumer Consultative Group (ECCG, 2018).

9.3. Institutional framework of consumer protection on services market – national perspective

In each EU Member State, there are national authorities competent for the protection of consumers' rights when dealing with specific service situation for example financial, tourism, internet and telecoms markets. The table below provides a list of countries and their respective competent authorities of credit or financial institutions where consumers may find useful information and help.

Table 9.1. National competent institutions dedicated to help consumers on financial services market in EU

Country	National competent institutions
Austria	Financial Market Authority Federal Ministry of Labour, Social Affairs and Consumer Protection
Belgium	The Financial Services and Markets Authority National Bank of Belgium Ministry of Economy Ombudsfm Ombudsman des assurances
Bulgaria	Commission for Consumer Protection Conciliation Commission on Dispute Payments Bulgarian National bank Financial Supervision Commission
Croatia	Croatian National Bank Croatian Financial Services Supervisory Agency
Cyprus	Central bank of Cyprus The competition and consumer protection service of the ministry of commerce, Industry and tourism of the republic of Cyprus
Czech Republic	The Czech National Bank The Czech Trade Inspection Authority
Denmark	Finanstilsynet The Danish Complaint Board of Banking Services
Estonia	The Estonian Financial Supervision Authority (EFSA) Consumer Protection Board
Finland	Financial Supervisory Authority The Finnish Competition and Consumer Authority Regional State Administrative Agency The Finnish Financial Ombudsman's Bureau Consumer Disputes Board Consumer Advisors
France	Autorité de Contrôle Prudentiel et de Résolution (ACPR) Banque de France Registre unique des intermédiaires en assurance, banque et finance (ORIAS) Direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF)
Germany	Federal Financial Supervisory Authority (BaFin) Federal Ministry of Finance (BMF) Federal Ministry of Justice and Consumer Protection (BMJV) Federal Ministry of Economics and Technology (BMWi)

Greece	General Secretariat of Consumer Affairs The Bank of Greece
Hungary	Magyar Nemzeti Bank (Central Bank of Hungary)
Iceland	The Financial Supervisory Authority The Consumer Agency
Ireland	Central Bank of Ireland
Italy	Bank of Italy Italian Competition Authority
Latvia	Consumer Rights Protection Centre Ombudsman of the Association of Latvian Commercial Banks Financial and Capital Market Commission
Lithuania	State Consumer Rights Protection Authority Bank of Lithuania
Luxemburg	Commission de surveillance du secteur financier Commissariat aux Assurances Ministry of Economy Ministry of Finance
Malta	Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji Office of the Arbitrer for Financial Services
Netherlands	Authoriteit financiële markten De Nederlandsche Bank
Norway	Finanstilsynet Forbrukerombudet
Poland	Komisja nadzoru finansowego Urząd ochrony konkurencji i konsumentów
Portugal	Banco de Portugal
Romania	National Authority for Consumer Protection
Slovakia	Ministry of Finance of the Slovak Republic National Bank of Slovakia Slovak Trade Inspection
Slovenia	Ministry of Economic Development and Technology Bank of Slovenia
Spain	Bank of Spain
Sweden	Finansinspektionen Konsumentverket Allmänna reklamationsnämnden
United Kingdom	Financial Conduct Authority Money Advice Service

Source: (www. credit or financial institutionshttps://eba.europa.eu/, 2018).

In some industries such as health care it can be identify strong involvement of the non-governmental institutions dedicated to increase patient

awareness and protect the patients' right. Very good example is the Active Citizenship Network which is decided to organize a widespread campaign in cooperation with some of the national patient associations involved in its network. The table below provides a list of countries and the national non-profit organisations involved in patients' rights including to go abroad for care.

Table 9.2. Non-profit national organisation helping the patients in EU

Country	Non-profit national competent institutions
Austria	Lower Austrian Patient and Nursing Advocacy
Belgium	Active Citizenship Network
Bulgaria	Patients' Organizations "With You"
Croatia	Croatian Association for the Promotion of Patients' Rights
Cyprus	Cyprus Alliance for Rare Disorders
Czech Republic	Klub pacientů mnohočetný myelom, z.s.
Denmark	Rare Diseases Denmark
Finland	Association of Cancer Patients in Finland
France	Inter-Association on health (CISS)
Germany	Bürger Initiative Gesundheit e.V.
Greece	Greek Alliance for Rare Diseases
Hungary	Hungarian Federation of People with Rare and Congenital Diseases
Ireland	Irish Patients' Association
Italy	Cittadinanzattiva - Tribunal for patients' rights
Lithuania	Council of Representatives of Patients' Organizations of Lithuania
Malta	Malta Health Network
Netherlands	European Patients Empowerment for Customised Solutions
Poland	Institute for Patients' Rights & Health Education
Portugal	Azorean Chronic Pain Patients Association
Romania	Romanian National Alliance for Rare Diseases
Slovakia	Society of Consumer Protection
Slovenia	SIBAHE Slovenian Foodbank, Association for justice and control, Kultlab Celje Society
Spain	Plataforma de Organizaciones de Pacientes
United Kingdom	Pelvic Pain Support Network

Source: (<http://www.activecitizenship.net/patients-rights/>, 2018).

In transportation sector it is also possible to find big number of institutions dedicated to protect passenger rights. Due to number of different means of transportations in EU organisations and are specialised in: air passengers' right, rail passengers' rights, bus and coach passenger rights and ship passengers' rights. All of them have a detailed description on EU website concentrating mainly on delays and cancellations, and information where the passengers can find help. The table below provides a list of countries and organisations where passengers can address the complaints.

Table 9.3. National competent institutions dedicated to help customers on air transportation service market

Country	National competent institutions
Austria	Agentur für Passagier – und Fahrgastrechte (apf)
Belgium	SPF Mobilité & Transport Direction générale Transport aérien Cellule Stratégique – Droits des passagers
Bulgaria	Ministry of Transport, Information Technologies and Communications, Directorate General, Civil Aviation Administration
Croatia	Croatian Civil Aviation Agency
Cyprus	Department of Civil Aviation
Czech Republic	Civil Aviation Authority Airport Ruzyně
Denmark	The Danish Transport and Construction Agency
Estonia	Tarbijakaitseamet (Consumer Protection Board)
Finland	Complaints from private consumers: Consumer Disputes Board
France	Direction générale de l'aviation civile (DGAC) Direction du transport aérien Mission du Droit des passagers Bureau des passagers aériens
Germany	Luftfahrt-Bundesamt (LBA)
Greece	Hellenic Civil Aviation Authority Air Transport and International Agreements Div Air Transport Economics Section D1/D
Hungary	Passenger complaints Ministry for Innovation and Technology Consumer Protection Strategy Department
Iceland	Icelandic Transport Authority
Ireland	Commission for Aviation Regulation
Italy	L'Ente Nazionale per l'Aviazione Civile
Latvia	Consumer Rights Protection Centre (CRPC)
Lithuania	Civil Aviation Administration
Luxemburg	Ministère de l'Économie Direction du Marché intérieur et de la Consommation
Malta	Malta Competition and Consumer Affairs Authority

Netherlands	Inspectie Leefomgeving en Transport Human Environment and Transport Inspectorate
Norway	Passenger complaints: Norsk ReiselivsForum Transportklagenemnda (Dispute Resolution Board)
Poland	Passenger complaints Commission on Passengers' Rights
Portugal	Autoridade Nacional da Aviação Civil (ANAC)
Romania	National Authority for Consumer Protection
Slovakia	Slovenská obchodná inšpekcia (Slovak Trade Inspectorate) ústredný inšpektorát
Slovenia	Civil Aviation Agency
Spain	Agencia Estatal de Seguridad Aérea División de Calidad y Protección al Usuario
Sweden	Passenger complaints: National Board for Consumer Disputes (ARN)
United Kingdom	Passenger Complaints Unit Civil Aviation Authority

Source: (<https://europa.eu/youreurope/citizens/travel/passenger-rights/>, 2018).

To increasing the level of legal protection of airline passengers and recognizing that the legal regulations existing in this area, both internationally (international conventions) and in case of individual Member States of EU, re insufficiently, legitimate bodies of the EU issued the Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding or cancellation or long delays of flights. It requires from the Member States to designate a national body responsible for implementing the provisions of the Regulation which is empowered to take the necessary measures to ensure compliance with passengers' rights, including the handling of passenger complaints against its provisions. At the same time, which is very important, is pointed out that the filing of complaints by passengers does not infringe passengers' rights to claim further compensation.

Consumers on the European Union market may receive specific advice as part of the following services: insurance and finance, telecommunications, energy and fuels, air and rail travel. The way of applying for compensation depends on the adopted legal system, the details of which are described below.

9.4. Good practice principles in services market – non-legislative regulations protecting consumer

As discussed the consumer protection is based on two main elements: legislative (law) and non-legislative (institutions) means of consumer protection. Apart of governmental institutions, the non-governmental and private persons can be identified as a examples of the non-legislative entities. They can be involved in economical, organisational and educational activities aimed to protect the customer rights. As a non-legislative regulations the self-regulation, soft law and deregulation can be described as the most popular on the service market in Europe.

Private policy stakeholders have always had a relatively open access to official officeholders in EU legislative processes, especially economic actors in sectors relevant to the working of the internal market. Their actions at the European level aim at achieving outcomes in public rule making that reflect their preferences and interests (Hix 2005: 12). According to van den Hoogen and Nowak (2009), the encouragement of self-regulation as an alternative to the classical legislative instruments intends to enhance further this role of private actors in European integration. It fits into a broader trend in Europe towards a more participatory style of governance which on its turn has been affected by the neoliberal ideological shift in public policy-making from government towards the market. In a pure sense, self-regulation concerns private actors who make rules for and by themselves on a voluntary basis to address common problems or interests (van den Hoogen & Nowak, 2009).

Soft law is a capacious term applying to self-regulation, voluntary regulation, co-regulation, quasi-regulation, and private governance. It can be defined (Mokrzysz-Olszyńska, 2007).

- ✓ broadly – than it stands for all rules of conduct other than formal laws, administrative regulations and agreements, or
- ✓ narrowly – when it is understood as a set of instruments developed by professionals on their own initiative, in cooperation with consumers and/or the state, or following an authorization granted by the state, and then implemented based on an agreement.

In next part of the chapter the examples will be descried.

Protecting the customer rights in service advertising campaign: The European Advertising Standards Alliance (EASA)

EASA promotes responsible advertising in commercial communications by means of effective self-regulation, while being mindful of national differences in culture, as well as legal and commercial practice. Advertising self-regulation helps ensure that ads are legal, decent, honest and truthful and by doing so helps create consumer trust in advertising and in brands. It works best within a regulatory framework, and has numerous advantages both for consumers and advertisers as well as regulators.

For Consumers: *Protecting consumers*: Advertising is a vital element of the economy by informing consumers of the different products and services available. Effective advertising self-regulation helps ensure that this advertising is responsible and can be trusted. *Consumers can voice concerns*: It also provides an additional layer of consumer protection, especially in areas such as taste and decency of an ad. Through this system the consumer can complain quickly, at no cost, and the advertiser must demonstrate that its advertisement did not breach the code, rather than the complainant proving that it did.

For the Advertising Industry: *Maintain consumer trust and brand reputation*: Consumer trust in a brand is crucial to corporate success, which is why brand reputation is extremely important. Advertising self-regulation, through the promotion of responsible advertising, helps build consumer trust in brands, which in turn builds brand loyalty, increases sales, and strengthens market share.

For Regulators: *Ad standards complementing regulation*: Advertising standards are designed to complement regulation. The costs of developing, implementing and enforcing ad standards are carried by the local ad ecosystem (more information: <http://www.easa-alliance.org/>)

Protecting the patients' rights: Active Citizenship Network (ACN)

Active Citizenship Network (ACN) was initiated in December 2001 as the European and international interface of the Italian civic participation organisation *Cittadinanzattiva* (Active Citizenship). ACN is a flexible network of

European civic organizations which are involved as partners in its different projects, addressed to encourage active participation of citizens in European policy-making. ACN mirrors Cittadinanzattiva's Italian policies, such as health, corporate social responsibility, education and training at the global level.

ACN's mission is to promote and support the construction of the European citizenship as an "active citizenship" which means the exercise of citizens' powers and responsibilities in policy-making. It recognizes the prior role of national and local civic organizations in this process and advocates enrichment of the European Union subsidiarity concept by strengthening the relationship between institutions and citizens, so that institutions favour free initiative of citizens, both individuals and organizations, in carrying out activities directed towards the common good.

They are the initiators of Interest Group "European Patients' Rights and Cross-border Healthcare" The idea to focused on patients' rights is linked to the widespread request of more than 80 civic and patient organizations sent to the EU Parliament to recognize officially the value of citizens' initiatives, such us the European Charter of Patients' Rights based on the Charter of Fundamental Rights of the European Union, and the European Patients' Rights Day, which has been organized every year on April 18th since 2007 at local, national and EU level (more information: <http://www.activecitizenship.net>).

Protecting the passengers' rights: Association of Passenger Rights Advocates (APRA)

The Association of Passenger Rights Advocates (APRA) was established in 2017 by passenger rights organizations from across the EU, offering a united voice on the protection of air passengers. APRA's mission to ensure maximum protection for air passengers by actively engaging in a constructive dialogue with the European and national institutions, as well as airlines, airports, National Enforcement Bodies, and other key stakeholders.

APRA offers a combination of solid data, in-depth analysis and collective expertise to inform policy makers, promote the interest of European air passengers and, in particular, provide access to justice (more information: <http://www.passengerrightsadvocates.eu>).

Protecting the financial service and digital rights: BEUC organisation

BEUC is registered as a non-profit organisation under Belgian law (AISBL). It was created on 6 March 1962 by 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.

BEUC was a pioneer, one of the first 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.

The main task is to represent at European level and defend the interests of all Europe's consumers. BEUC investigates EU decisions and developments likely to affect consumers, with a special focus on five areas identified as priorities by our members: Financial Services, Food, Digital Rights, Consumer Rights and Enforcement and Sustainability.

BEUC supports the empowerment of consumers through competitive markets, but complemented by health and safety safeguards. Only safe products and services, which do not put at risk our health, future generations or the environment, should be available on the EU market. Where consumers cannot be empowered, regulatory measures must protect their economic and legal interests. This is especially essential for vulnerable consumers (more information: <https://www.beuc.eu>).

Conclusion

Consumer awareness is an act of making sure that consumer is aware of the information about products, goods, services, and consumers rights. Consumers have the right to information, right to choose, right to safety. It is especially challenging when the services are discussed. The specifics of the product, its intangibility, can be misleading and make the customer susceptible to illegal practices. Both legal systems and institutional systems should protect the rights of the customer and in the same time give him the opportunity for education. The strong impact apart of governmental bodies non-governmental institutions have in Europe. They are manly focused on providing the help to customers in particular situations but also for strong educational activities. By informing and educating consumer on their rights and empowering them to make smarter and better choices based on clear, accurate and consistent information independent, the non-governmental consumer organizations also play a significant role in consumer protection and implementation of consumer law in the European Union.

Institutions of consumer rights protection

Petra Sippola* & Lieven Theys**

Introduction

This chapter is written from the perspective of the consumer. ‘Consumer’ means any natural person who is acting for purposes which are outside his trade, business, craft or profession. This is the central question of this chapter. Where can a consumer residing in the European Union turn to if problems arise with a purchased goods or services, especially when the product or service was purchased in another EU country?

The present chapter takes a look at the agencies and institutions overseeing consumer protection inside the European Union. The modern EU consumer policy protects consumers’ rights through legislation and ensures that consumers maintain their rights along with economic and social changes. Several EU organs and agencies participate in the improvement and development of consumer protection. This chapter considers in particular the European Consumer Centre, having a crucial importance for consumer matters inside the European Union, especially from the consumer’s perspective.

The second part of this chapter present consumer rights and law regulations. A consumer mostly wants to avoid the expenses and the delay caused by formal proceedings in court. When the consumer meets that problem in another Member State where procedures are even more unfamiliar, he will even be more deterred. The development of an integrated European market is far ahead of the uniformization of European law

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enforcement. In this chapter will be presented topic how the European Union has improved and uniformized the possibilities of redress for the consumer recently.

10.1. European agencies and institutions of consumer protection

There are many institutions and agencies dedicated in the European Union to protect consumer rights on the market. Apart of protecting consumer they are responsible for promoting good business practices and informing consumer about potential threats on market. The most important institutions are present below.

European Parliament - Committee on the Internal Market and Consumer Protection

The Committee on the Internal Market and Consumer Protection (IMCO) is responsible for overseeing the EU provisions related to the free mobility of goods and services, free mobility of labour, customs policy, standardisation, and consumers' economic interests. The members of the Committee on the Internal Market and Consumer Protection strive to lower barriers to trade and to simplify the legislation in order to increase competition on the internal market, while taking consumers' interests into account in the different areas.

A well-functioning internal market has a decisive role for the promotion of prosperity, innovation and competition, from which both companies and consumers benefit. The Committee copes with a great deal of challenges and opportunities, especially regarding the utilisation of opportunities provided by the digital internal market and the internal market of services. The Committee's task is to ensure the security of products, to secure consumer's rights, to inform consumers of products and services, to prevent anticompetitive activity, and to reduce administrative burden. The Committee on the Internal Market and Consumer Protection cooperates with all the EU member states in order to make sure that the internal market provisions can be implemented

in practice and are applied appropriately and on time. The European Parliament and Commission pass the overwhelming majority of EU laws. The ordinary legislative procedure of the European Union gives the Parliament an equal status as a legislator with the European Commission²⁹.

European Commission - Department of Justice and Consumers

The Justice and Consumers department of the European Commission is responsible for EU policy on justice, consumer rights, and gender equality. The aim of the European Commission is to strengthen consumer's security regarding products, services and foodstuffs, to strengthen the regulatory framework, and to intensify market surveillance. The improvement of knowledge and the adaptation of consumer protection to the digital era, as well as tackling problems met by consumers can also be seen as one of the goals of the Commission.

The Commission safeguards consumers' rights chiefly through legislation, including the swift and efficient solution of problems with vendors, e.g., through dispute resolution procedures and the European Consumer Centres. As a representative of consumers, the Commission regards close cooperation with consumer organisations as very important. The participation of these organisations in the EU policies is crucial for achieving a better and more efficient consumer protection legislation.

Some EU member states have several consumer organisations. They differ in size, background and capacity, but their common goal is to secure that consumers are aware of their rights and able to use them in practice.

The European Consumer Consultative Group is the Commission's most important forum for listening to national and European consumer organisations. The aim of the European Consumer Consultative Group is to recognise, based on common discussions on the forum, problems related to consumers' interests, to issue statements on EU matters with effects on safeguarding consumers' interests, to advise and guide the Commission when

²⁹ For instance, in economic governance and management, immigration, energy, traffic, and environmental and consumer protection matters.

adopting policies and measures with effects on consumers, to inform the Commission on the development of the consumer policy in the member states, and to cooperate with other national organisations. The European Consumer Consultative Group convenes in Brussels three times a year.

European Union Agencies – Consumer, Health, Agriculture and Food Executive Agency (CHAFEA)

The Consumer, Health, Agriculture and Food Executive Agency was established on 1 January 2005 (Before, in 2005–2008, PHEA, and EAHC in 2008–2014). In 2013, the term of office of the Agency was extended to 2024, and the scope of operations was expanded to fields of health, consumer protection and food security. In 2016, its mandate was expanded to the administration of information distribution about and promotion of EU farm products.

The consumer programme of the Agency for 2014–2020 is aimed at helping consumers fully enjoy their rights as consumers and support growth, innovation and the objectives of the Europe 2020 Strategy, as well as actively participate in the EU internal market. The new consumer programme, based on a previous one (2007–2013), will include a 188.8 million euros budget to support the consumer policy during the next few years. The Agency's new programme focuses on four main goals:

- ✓ a common market of safe products for EU citizens and as part of competitive companies and vendors;
- ✓ a common market on which citizens are well-represented by professional consumer organizations, with an ability to react to challenges of today's economic environment;
- ✓ a market on which citizens are aware of and use their rights as consumers; in order to be able to promote the growth of a competitive market, citizens must have the opportunity to be compensated whenever problems occur, without time-consuming and expensive court procedures;
- ✓ concrete and effective cooperation between national organs to protect the enforcement of consumers' rights and support of consumers.

European Consumer Centre

The European Consumer Centre is responsible for consumer matters in cross-border trade. The duty of the European Consumer Centre is to counsel consumers in matters related to foreign companies and to offer conciliation in disputes a consumer has in another member country, Norway, or Iceland. The most common reasons for contacting the Centre include the delivery problems and manufacturing defects of online web stores, airline passengers' problems when a flight is delayed or cancelled, and car rental abroad. The services of the European Consumer Centre are free of charge for users.

The European Consumer Centre advises citizens in matters related to the ordering, payment and return of products, and with other problems of e-commerce. If necessary, the Centre also warns citizens about pitfalls of e-commerce and unreliable vendors. The European Consumer Centre also informs consumers of the above matters and serves consumers through web pages, social media, a newsletter, and personal counselling by telephone or email.

The European Consumer Centre is part of a Europe-wide network (ECC-Net). The Centre has offices in every EU country and Norway and Iceland. Its operations are financed by the European Commission and the states.

The European Consumer Centre always strives to reach an amicable settlement. In single consumer disputes, the aim of the Centre is to repatriate consumers' receivables in cross-border trade. The operations of the Centre do not include exercise of official authority, and it is not possible for the Centre to force a vendor or service provider to compensate the customer for a breach of contract.

In Finland, the European Consumer Centre is part of the Finnish Competition and Consumer Authority. The Finnish office cooperates closely with the Consumer Centres in the other countries. The Consumer Centres of each country form together the network of the European Consumer Centres, whose action is guided by the European Commission. Each country also has national consumer counselling services, which counsel citizens in matters related to each country's own consumer protection legislation.

When a product or service purchased from a vendor based in another EU country does not correspond to what was agreed, proves to be defec-

tive, or there is another problem with the transaction with the contracting party, one can proceed as follows.

At first, a complaint about the problem must be filed in writing, for which the European Consumer Centre provides complaint letter templates and help with the resolution of the dispute. If the dispute is not resolved, the matter can be submitted to an outside dispute settlement body, in which case the consumer will not need to be in direct contact with the dispute settlement body. The European Consumer Centre will do it for you. On 15 February 2016, the European Commission opened for consumers a channel for resolving disputes related to agreements made online. If the economic value of the dispute is significant and the above-mentioned, alternative settlement procedures are of no help, taking legal action must be considered.

10.2. Consumer dispute resolution

When searching for an overview of consumer dispute resolution in the European Union you will not find much more than links to webpages of the European Union (Consumer dispute resolution, 2017). These webpages either provide a fairly exhaustive overview of web links without a continuous and coherent text or a thorough and clear description for every consumer, but without continuous reference to the European policies or the regulatory framework. When searching for literature on this topic, the literature you will find mostly only deals with one or a few possibilities of consumer dispute resolution in the European Union e.g. on online consumer dispute resolution or slightly wider on alternative dispute resolution or is actually very (too) extensive (Cortés, 2010). The objective of this chapter is to give a scientifically based and complete but also manageable overview of consumer dispute resolution in the European Union for the moment.

Informal dispute resolution

If a trader failed to comply with EU or national law, the consumer can as a first step approach the trader. This is a logical first step if you take into account that most of the consumers want to avoid the expenses and the delay caused

by formal proceedings in court. Simultaneously or subsequently the consumer can contact a national consumer organization (<http://ec.europa.eu/consumers/>) or a competent national regulatory authority (e.g. in the financial sector) (<http://www.eba.europa.eu/>). Consumer organizations and national regulatory authorities provide more information about the rights of the consumer and take action to help to enforce them. If the consumer has problems when purchasing a good or service abroad in the EU, Norway or Iceland, it is recommended to contact the European Consumer Centre in its country of origin.

In a recent study (Weatherill, 2013: 294) the European Consumer Centres network is described as follows. The European Consumer Centres network (ECC-Net) is funded by the Commission in conjunction with national authorities. All Member States and also Iceland and Norway have a national contact point which belongs to the ECC-Net. The aim of the network is to promote cross-border administrative cooperation and to provide information to consumers on their legal rights and duties and also to help in the event of a dispute. The network has existed in its current form since 2005, when it was created out of the merger of two pre-existing initiatives, the network for the extra-judicial settlement of consumer disputes (EEJ-Net, established in 2000) and the Network of 'Euroguichets', European Consumer Information Centres initially envisaged as advice centres for consumers in transfrontier regions and first operational in 1993. Moreover, alongside ECC-Net a special version directed at the financial services sector operates in tandem – FIN-NET.

To learn more about the financing of the ECC-Net, we consulted a more recent study (Cortés, 2016: 294).

The budget for the ECC-Net is provided under the EU programme for consumer policy. Alongside the ECC-Net is FIN-NET, which carries out the same role in the financial sector. The ECC-Net also cooperates with other European networks, namely SOLVIT (Internal Market) and the European Judicial Network on civil and commercial matters. The ECC-Net is co-financed through grants by the EU (Directorate General Justice) and by each of the participating Member States, which are the 28 EU countries, as well as Iceland and Norway.

The ECC-Net is a network of 30 offices in the 28 Member States of the European Union, Iceland and Norway. It is important to note that the ECC-Net assists in resolving complaints about purchases made in another country of the network, when travelling or shopping online. Thereby it is irrelevant whether this purchase was on the spot or online. If the consumer resides in the European Union, Iceland or Norway the European Consumer Centre in his country of residence can provide advice on his consumer rights, assist him to resolve a complaint against a trader based in a Member State of the EU, Iceland and Norway with the aim of achieving amicable outcomes and redirect him to an appropriate body if the ECC-Net can't help. Consequently the ECC-Net cannot help to solve business-to-business or private issues, national issues and problems concerning a governmental body (ministry, national agency). Additionally, the ECCs can't represent the consumer in court nor enforce the law to apply sanctions on traders.

Alternative dispute resolution

When consumers have a problem with a trader regarding a product or service they bought, they can settle their dispute out-of-court through an Alternative Dispute Resolution procedure. Only after the consumer has unsuccessfully explored the ways of settling his dispute directly with the trader or with the help of a consumer organization in his country, he may try to solve his problem through alternative or online dispute resolution. Such procedures are an alternative to resolving disputes before a court and are hence called Alternative Dispute Resolution (ADR). When they are carried out online, they are called Online Dispute Resolution (ODR). Resolving disputes through ADR, in general, is easier, faster and less expensive than resolving disputes before a court. In the European Union, ADR procedures can take different forms and have different names e.g. mediation, conciliation, ombudsmen, arbitration, complaints boards. ADR can be used for any market sector such as transport, banking, telecoms, energy, electronic goods, household appliances, car rental, dry cleaning, etc.

Here is what we can read in the Preamble of the Directive on consumer ADR that Member States had to incorporate into national laws by 9 July 2015, 'In order for consumers to exploit fully the potential of the internal mar-

ket, ADR should be available for all types of domestic and cross-border disputes covered by this Directive, ADR procedures should comply with consistent quality requirements that apply throughout the Union, and consumers and traders should be aware of the existence of such procedures. Due to increased cross-border trade and movement of persons, it is also important that ADR entities handle cross-border disputes effectively.’ The goal of this legislation is to ensure the proper functioning of the EU’s single market.

If the consumer and the trader cannot settle the contractual dispute directly, according to article 13 ADR Directive the trader who agrees or is obliged to use ADR must inform consumers about the relevant ADR entity or ADR entities on their websites as well as in their general terms and conditions. They must also inform consumers about ADR when a dispute can’t be settled directly between the consumer and the trader. The Directive on consumer ADR ensures that consumers have access to ADR for resolving their contractual disputes with traders. Access to ADR is ensured no matter what product or service they purchased (only disputes regarding health and higher education are excluded), whether the product or service was purchased online or offline and whether the trader is established in the consumer’s Member State or in another one.

What is the aim of the ADR Directive (2013/11/EU)? Firstly, it ensures that EU consumers can submit their contractual dispute with an EU trader over a product or service to an alternative dispute resolution entity — a recognized body whose role is to resolve disputes by means of ADR procedures, i.e. without going to court. ADR entities involve a neutral party, such as a mediator, ombudsman or complaints board, that attempts to resolve the dispute through an ADR procedure. Depending on the form of ADR procedure that a given ADR entity operates, the neutral party can either propose or impose a solution or bring the parties together to help them find a solution. Secondly, it sets out binding quality requirements for ADR entities and procedures to ensure aspects such as transparency, independence, fairness and effectiveness. All ADR entities must meet these binding quality requirements, guaranteeing that they operate in an effective, fair, independent and transparent way. In the interest of transparency, EU countries must ensure that ADR entities’ websites provide clear and understandable information. This includes contact details and the types of disputes that these entities can

deal with, as well as costs, average length and legal effect of the outcome of the ADR procedure. ADR entities must also make publicly available on their websites the annual activity reports containing information on the disputes that they have handled.

Thirdly, compliance is ensured by national competent authorities designated by EU countries. Each EU country must designate one or several competent authorities, which have national oversight over ADR entities and ensure their compliance with the quality requirements. The competent authorities establish national lists of ADR entities. Only disputes resolution entities that comply with the quality requirements can be included as 'ADR entities' in those lists. Member States' competent authorities, after their assessment, communicate to the European Commission the list of national dispute resolution bodies. An almost complete list is electronically available on the site of the European Commission (<https://ec.europa.eu/consumers/>). And fourthly and lastly, it obliges traders to inform consumers about ADR when the former have committed or are obliged to use ADR and when they cannot bilaterally resolve a dispute with the consumer.

According to article 17 Directive 2013/11/EU ADR, entities must also cooperate in the resolution of disputes within the EU. They must also exchange best practices among themselves and with national authorities about the settlement of disputes.

On 18 June 2013 the Regulation on consumer ODR was published simultaneously with the Directive on consumer ADR in the Official Journal of the European Union. According to the Preamble (9), 'This Regulation should apply to the out-of-court resolution of disputes initiated by consumers resident in the Union against traders established in the Union which are covered by Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (Directive on consumer ADR).' This Regulation has applied since 9 January 2016. In order to fully understand the reason for the Regulation it is very interesting to read more of the Preamble. '(6) The internal market is a reality for consumers in their daily lives, when they travel, make purchases and make payments. Consumers are key players in the internal market and should therefore be at its heart. The digital dimension of the internal market is becoming vital for both consumers and traders. Consumers in-

creasingly make purchases online and an increasing number of traders sell online. Consumers and traders should feel confident in carrying out transactions online so it is essential to dismantle existing barriers and to boost consumer confidence. The availability of reliable and efficient online dispute resolution (ODR) could greatly help achieve this goal. (7) Being able to seek easy and low-cost dispute resolution can boost consumers' and traders' confidence in the digital Single Market. Consumers and traders, however, still face barriers to finding out-of-court solutions in particular to their disputes arising from cross-border online transactions. Thus, such disputes currently are often left unresolved.

(8) ODR offers a simple, efficient, fast and low-cost out-of court solution to disputes arising from online transactions. However, there is currently a lack of mechanisms which allow consumers and traders to resolve such disputes through electronic means; this leads to consumer detriment, acts as a barrier, in particular, to cross-border online transactions, and creates an uneven playing field for traders, and thus hampers the overall development of online commerce.'

The Regulation on consumer ODR aimed to create an online dispute resolution (ODR) platform at EU level. The ODR platform is a web-based platform developed by the European Commission and is effectively accessible to consumers and traders since 15 February 2016 (<https://ec.europa.eu/odr>). Its objective is to help consumers and traders resolve their contractual disputes about online purchases of goods and services out-of-court at a low cost in a simple and fast way. The goods or services may be bought anywhere in the European Union. It allows consumers to submit their disputes online in any of the 23 official languages of the European Union. The ODR platform transmits the disputes only to the quality dispute resolution bodies communicated by Member States. Member States have to establish a national contact point to provide assistance to users of the ODR platform. The list of these national contact points is set up by the Commission and available on the ODR platform (<https://ec.europa.eu/consumers/>).

The ODR platform is an interactive and user-friendly website, open to any consumer or trader in the EU, available in all EU official languages and free of charge. The platform has several functions. These include offering an electronic complaint form, informing the respondent party about the

complaint, identifying national mediation bodies and electronic case management. Once the electronic complaint form has been submitted to the ODR platform, the platform will quickly contact and seek a response from the respondent party. It will also transmit the complaint to the mediation body that the parties agree to use. If the mediation body agrees to deal with the dispute, it will strive to resolve the dispute quickly (most disputes should be settled within 90 days) and inform the ODR platform of the results of the procedure.

Businesses established in the EU that sell goods or services to consumers online need to comply with the ADR/ODR legislation. Online traders that commit or are obliged to use ADR must inform consumers of the dispute resolution body/bodies by which they are covered. They should do this on their websites and in the general terms and conditions of sales or service contracts. They are required to provide a link from their website to the ODR platform (Article 14). To signpost the ODR platform, traders can use clickable web-banners that are available in the different EU languages (<https://europa.eu/youreurope/>).

Formal legal action

After he contacted the trader, a national consumer organization, a competent national regulatory authority and/or a European Consumer Centre, the consumer still has the right to bring his case before a court if the dispute with the trader doesn't get solved. The consumer may avoid the cost and long duration of bringing the case to court by choosing Alternative dispute resolution (ADR). Alternative dispute resolution procedures are provided by neutral out-of-court bodies. These out-of court bodies can bring the consumer and the trader together to help find a solution to their dispute, they can propose a solution or even impose one. Bringing the case to court is the very last way to resolve the dispute and is in some cases even ruled out if the disputing parties agreed that the decision of the extrajudicial body – the so-called arbitrator then – would be binding.

Despite all the above-mentioned options, the consumer may still have to go to court. Since almost a decade the European Union has provided two faster and cheaper procedures in some cases. Only recently these proce-

dures have been simplified and broadened. Below, we will examine the two procedures that we are referring to, namely the European Small Claims Procedure and the European Order for Payment procedure. They can help you recover money from a trader in another EU country.

Both points 1 of the Preamble of the Regulation on ESCP and of the Regulation on EOP sound the same, “The Community has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, inter alia, measures in the field of judicial cooperation in civil matters having cross-border implications and needed for the proper functioning of the internal market.” (Regulation (EC) No 861/2007). Both Regulations should only apply to cross-border cases. A cross-border case should be considered to exist when at least one of the parties is domiciled or habitually resident in a Member State bound by these Regulations other than the Member State of the court or tribunal seized (Regulation (EU) 2015/2421).

A) *European Small Claims Procedure (ESCP)*

The general aim of the Regulation on ESCP has been to improve access to justice for both consumers and businesses by reducing costs and accelerating civil procedures with regard to claims within its scope (Regulation (EU) 2015/2421).

The European Small Claims Procedure is based on the in 2015 amended Regulation (EC) No 861/2007. The amending Regulation (EU) 2015/2421 is fully applicable from 14 July 2017 (Regulation (EU) 2015/2421).

What is the precise aim of Regulation (EC) No 861/2007 and Regulation (EU) No 2015/2421?

Regulation (EC) No 861/2007 introduces the European Small Claims Procedure. It aims to simplify and speed up cross-border small claims litigation in civil and commercial matters and cut costs. Regulation (EU) 2015/2421 simplifies and broadens the European Small Claims Procedure. It makes the procedure available in more cases, cuts the court fees and promotes the use of electronic communications, such as videoconferencing, and forms of distance payments.

The rules apply to all EU member states except for Denmark, which has opted out of the EU cooperation in the field of justice. This means that the European Small Claims Procedure cannot be applied by Danish courts. So neither Danish nor foreign consumers or businesses can bring a case in Denmark under the European Small Claims Procedure. However, Danish consumers and businesses may use the European Small Claims Procedure at foreign courts of law. What matters is whether the rules apply in the Member State where the case is brought or not (The European Small Claims Procedure, 2016).

When can the ESCP be used?

The European Small Claims Procedure can be used to make a claim against a person, organization or business based in another EU country for a maximum value of 5000 EURO, excluding interest and expenses (Regulation (EU) 2015/2421). The maximum value used to be 2000 EURO before Regulation (EC) No 861/2007 was amended (Regulation (EC) No 861/2007). The claimant can use the procedure to claim reimbursement for goods or services. For example, a consumer can make a claim for a faulty product that he bought in another EU country, or bought online from someone living in a different EU country. Be aware that some civil and commercial matters are not covered by the procedure, including: revenue, customs or administrative matters; family rights arising from marriage (such as maintenance), wills and successions; social security and employment entitlements; the liability of the state³⁰.

³⁰ The Regulation shall not apply to matters concerning: (a) the status or legal capacity of natural persons; (b) rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage; (c) maintenance obligations arising from a family relationship, parentage, marriage or affinity; (d) wills and succession, including maintenance obligations arising by reason of death; (e) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; (f) social security; (g) arbitration; (h) employment law; (i) tenancies of immovable property, with the exception of actions on monetary claims; or (j) violations of privacy and of rights relating to personality, including defamation.

How does the ESCP work?

There is no lawyer required for this procedure. The Small Claims Procedure is, in principle, a written procedure, that does not require a physical presence in court³¹. The claimant can make the claim in his local court even if the other party is in another country. This procedure cuts costs because it is not necessary to take a lawyer to submit a claim. It speeds up cross-border small claims litigation because of tight deadlines during the progress of the procedure and because it is (mostly) a written procedure.

To file a claim, the claimant needs to fill in a form giving details of the claim, sum demanded, etc. (Form A – in the annexes of the regulation) and add any documents that can support this claim. The standard claim form (<https://e-justice.europa.eu/>) must be available in all courts and tribunals where an ESCP can be launched as well as through relevant national websites. The claim must be submitted in the language of the court, as must the response, any counterclaim, the description of supporting documents, essential documents, etc.

Once completed the claimant should send his form and any supporting documents, such as receipts or invoices, to a competent court – either in his home country or in the other EU country concerned. On the European e-Justice Portal the claimant can find the competent court (<https://e-justice.europa.eu/>). If the claimant has not provided enough information, a second form (Form B) is sent asking for the missing information by a deadline. The application is rejected if the claimant does not fulfill the court's demand on time or if the claim is clearly unfounded or inadmissible. If the claim is outside the scope of the ESCP, the court notifies the claimant³². If the claim is within the scope of the ESCP, the defendant is notified. Once the court receives the completed claim, they prepare a standard response form (Form C), which must be sent to the defendant within 14 days, together with a copy of the claim and any supporting documents. This must be sent by post with dated acknowledgement of receipt; if this is impossible, other methods of service may be used. The defendant has 30 days from the date of service of the answer form to respond. Within 14 days of receiving this response, the court

³¹ However, the court may decide to carry out an oral hearing.

³² If the claim is not withdrawn, the court proceeds with it under the relevant procedural law in that country.

forwards a copy of the reply to the claimant, with any relevant supporting documents. Any counterclaim by the defendant (using Form A) is served on the claimant who has 30 days to respond³³. The court must give judgment within 30 days of receipt of the response from the defendant (or claimant, if there is a counterclaim). The court may ask for further information to be provided within 30 days and/or take evidence or summon the parties to a hearing³⁴, also to be held within 30 days of the summons. In these cases, the court still gives their judgment within 30 days, but from the time of receiving the information required or holding the hearing. If the parties do not reply in time, the court still gives its judgment. The court shall issue a certificate of judgment to facilitate cross-border enforcement (without further cost), using Form D, at the request of a party.

How to enforce the ESCP judgement?

Regulation (EC) No 861/2007 ensures that judgments are recognized and enforceable in other EU countries (with the exception of Denmark) without the need for a declaration of enforceability. The judgment cannot be reviewed as to the substance in the EU country of enforcement. Governed by the law of the country in which the judgment is enforced, the party seeking enforcement produces an original copy of the judgment and of the certificate (Form D) translated into the language of that country. No security, bond or deposit on the grounds that the claimant is a foreign national or is not domiciled or resident in the EU country of enforcement can be required. The claimant does not need an authorized representative or an address in the country of enforcement, other than that of agents competent to carry out the enforcement procedure.

Who pays the costs of the ESCP proceedings?

Parties are entitled to receive practical assistance in filling out the forms as well as general information on the scope of the ESCP and the compe-

³³ If the counterclaim exceeds 5000 EURO, both the main claim and counterclaim are dealt with in accordance with the law applicable in the country in which the action is taken.

³⁴ A hearing is held only if necessary or if requested by one of the parties. The request may be refused if it is clearly unnecessary for the fair conduct of the proceedings. The hearing may be via videoconference or similar technology.

tent courts. This information is to be provided free of charge. However, the claimant does not need to hire a lawyer to start a Small Claims Procedure the process may involve some costs. He will usually have to pay a court fee in his local court and, in cross border cases, may have to pay to have documents translated. Court fees must not be disproportionate and must not exceed those for equivalent national simplified court procedures. EU countries must ensure that court fees can be paid using at least one method of distance payment, such as: bank transfer; credit or debit card; direct debit from the claimant's bank account. In some instances, these costs will be reimbursed if your case is successful. The unsuccessful party will have to pay the costs of the proceedings. However, the court will not award the winning party any costs if these are made unnecessary or disproportionate to the claim.

More information on the European Small Claims Procedure is available on the eJustice Portal (<https://e-justice.europa.eu/>).

B) *European Order for Payment procedure (EOP)*

The general aim of the Regulation on EOP has been to improve access to justice for both consumers and businesses by reducing costs and accelerating civil procedures with regard to claims within its scope (Regulation (EU) 2015/2421).

The European Order for Payment procedure is based on Regulation (EC) No 861/2007 (Regulation (EC) No 1896/2006). It entered into force on 12 December 2008.

What is the scope of Regulation (EC) No 861/2007?

One can use the European Payment Order to recover monetary claims in all EU Member States with the exception of Denmark. It applies to uncontested civil and commercial claims, for example where a claim has already been settled in court and agreed to by the debtor in cases where at least one of the parties lives in an EU country different from the one where the application for an order is made. The procedure does not apply to certain issues: revenue, customs or administrative matters; state liability for acts and omissions in the exercise of state authority; matrimonial property

regimes; bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, and judicial arrangements; social security; claims arising from non-contractual obligations, unless there was an agreement between the parties or an admission of debt; or they relate to liquidated debts arising from joint ownership of property.

How does the EOP work?

The European Payment Order is a completely written procedure, so you don't need to go to court to use it. To start the procedure, the applicant first needs to fill in form A (<https://e-justice.europa.eu/>), giving details of the parties concerned, the nature and the amount of his claim. Once complete, he should send the form to a competent court (<https://e-justice.europa.eu/>). The jurisdiction of courts is determined by the rules set out in Regulation (EC) No 1215/2012. The court to which an application has been made considers whether the various conditions have been met (the cross-border nature of the case in civil and commercial matters, the jurisdiction of the court, etc.) as soon as possible, as well as whether the claim appears to be well-founded. If his case is admissible under the European Payment Order procedure, the court will issue the European Payment Order within 30 days. The court must inform the applicant of its reasons for rejecting a claim. In that case, there is no right of appeal, but the claimant may make a new application for an EOP or use another procedure available under the law of an EU country.

In Hungary, the European Payment Order is issued by notaries, but in all other EU countries it is issued by courts.

How to enforce the EOP judgement?

Once he receives the European Payment Order, the debtor (the person you're claiming the money from) has 30 days to either accept or contest your claim. If the debtor contests the European Payment Order, the case will be transferred to the ordinary civil courts and be dealt with under national law. If they don't oppose the claim, the European Payment Order will become automatically enforceable. To get the order enforced, the clai-

mant needs to send a copy of the European Payment Order, and if necessary a translation, to the enforcement authorities in the relevant EU country.

More information on the European Payment Order is available on the eJustice Portal (<https://e-justice.europa.eu/>).

C) *Formal Court Procedure*

The title of Council Directive 2002/8/EC of 27 January 2003 is “to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes”. The background of this directive was the in 2000 published Green Paper of the European Commission on legal aid in civil matters with a view to taking stock of difficulties encountered by cross-border litigants and proposing solutions. This Commission initiative was all the more necessary since existing conventions on the matter (the 1977 Strasbourg Agreement on the Transmission of Legal Aid Applications and the Hague Convention to Facilitate the International Access to Justice, signed in 1980) had not been ratified by all EU countries.

What is the precise aim of Council Directive 2002/8/EC?

It seeks to: improve access to justice in cross-border civil cases; establish EU-wide rules on legal aid; make sure people (including consumers) who cannot afford legal help have access to it; encourage cooperation on legal aid between EU countries.

What is the scope of Council Directive 2002/8/EC?

According to article 1(2), “It shall apply, in cross-border disputes, to civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.” So this directive covers all civil matters, including business, employment and consumer protection. According to article 2(1), “For the purposes of this Directive, a cross-border dispute is one where the party applying for legal aid in the context of this Directive is domiciled or habitually resident in a Member State other than the Member State where the court is sitting or where the decision is to be enforced.”

This Directive is applicable since 31 January 2003 to all EU Member States with the exception of Denmark. These EU Member States had to incorporate it into national law by 30 November 2004.

For a consumer this directive means that if he/she believes his/her rights under EU law have been breached and he/she decides to enter into a formal court procedure, he/she is entitled to: a fair and public hearing within a reasonable time limit before an independent and impartial court; the services of a lawyer to advise, defend and represent him. Even if the service provider or trader is based abroad, the consumer can have his case heard in his home country if the company is commercially or professionally active in or towards his country. If he/she is not able to pay for formal legal action, he/she should be entitled to legal aid. It gives people who cannot afford legal representation the right to legal aid. It is for EU citizens and nationals of non-EU countries living in the EU. Legal aid may include: legal advice; legal assistance and representation in court; exemption from court fees; exemption from certain fees in international cases (e.g. interpretation, translation, travel). The applicant needs to fill in the form for legal aid application in another EU country and submit it to his local court which will send it to the competent court in the other EU country. To facilitate this procedure, a standard form for legal aid applications and for the transmission of such applications had to be established. Commission Decision 2004/844/EC established a standard form for legal aid applications while Commission Decision 2005/630/EC set out the standard form for sending legal aid applications between EU countries. EU countries can make more generous arrangements for legal aid applicants if they want.

For more information, see 'Legal aid' on the e-Justice portal (<https://e-justice.europa.eu/>).

Conclusion

As the worldwide digital market is evolving fast, the European Union should focus on online purchases by consumers. In our opinion there is need for EU policies that promotes even harder than today alternative online consumer dispute resolution. Our own preference is to promote online independent and specialized arbitration that can settle consumer disputes in a binding manner. Traders selling online to consumers residing in the European Union should always give the consumer the opportunity to choose for this kind of arbitration. The Member States and the European Commission should guarantee that this kind of arbitration is done in an objective way by certified arbitrators. The costs of proceedings should be kept as low as possible and should be borne by the losing party.

In this chapter was made an overview how a consumer that has problems with an item or a service purchased in another EU country, regardless of whether he/she made his/her purchase online or offline, can seek redress.

The first and best way of settling his/her dispute is directly with the trader, with or without the help of a national consumer organization, a competent national regulatory authority or the European Consumer Centre of the Member State where the consumer resides.

The second preferable way is to try to solve his/her problem through alternative (online) dispute resolution. These procedures are provided by neutral out-of-court bodies such as conciliators, mediators, arbitrators, the ombudsman and complaints boards. They can bring the consumer and the trader together to help find a solution to their dispute. They can also propose a solution or even impose one. Alternative dispute resolution bodies have to meet strict EU quality criteria, which guarantee that they handle the dispute in an effective, fair, independent and transparent way. Most of them can help the consumer free of charge or at a low cost. They usually reach an outcome within 90 days. As consumers increasingly make purchases online and an increasing number of traders sell online, consumers and traders should feel confident in carrying out transactions online so it is essential to dismantle existing barriers and to boost consumer confidence. The availability of reliable and efficient online dispute resolution could

greatly help achieve this goal. Online dispute resolution offers a simple, efficient, fast and low-cost out-of court solution to disputes arising from online transactions. And so that is why online dispute resolution is a preferable way of consumer dispute resolution.

Of course the consumer can still bring his/her case before a court. This does not always have to be a slow and/or very expensive procedure. The recently improved Regulations on the European Small Claims Procedure and on the European Order for Payment procedure simplify and speed up cross-border small claims litigation in civil and commercial matters and cut costs. Finally, the Council Directive 2002/8/EC establishing minimum common rules relating to legal aid in civil matters also improves access to justice in cross-border disputes.

For more than a decade, the European Union has been significantly improving consumer access to justice in cross-border disputes. The website of the European Union foresees an overview of national consumer organizations, competent national regulatory authorities and European Consumer Centers. That makes these organizations more accessible. The ECC-Net is funded by the European Commission in conjunction with national authorities. The Directive 2013/11/EU and the Regulation (EU) No 524/2013 further stimulate alternative dispute resolution and alternative online dispute resolution. And as just mentioned above the European Small Claims Procedure and the European Order for Payment procedure were realized via EU-Regulations that were only recently amended by Regulation (EU) 2015/2421. The most recent Regulation simplifies and broadens the European Small Claims Procedure. Finally, access to justice in cross-border civil cases in general is improved by the Council Directive 2002/8/EC.

Building consumer awareness

Marta Grybś-Kabocik

Introduction

Consumer protection policies have been developed all over the world for years. It shall be underlined that in European Union the level of consumer protection is much higher, than for example in some developing countries. Nevertheless, despite huge progress in the area of raising consumer awareness (Carrigan & Attalla, 2001), there is still a gap to work on (Ishak, & Zabil, 2012). At the same time, the study shows that consumer awareness and the level of knowledge about their rights have strong influence on effective consumer behavior, the way they are making their decisions and their attitude towards brands (Brennan, & Gallagher, 2002). Consumer awareness might be understood as the level of understanding and recognizing consumer rights and responsibilities, in which, as first stated by US President John F. Kennedy, one can include: satisfaction of basic needs, safety, information, choice, representation, be heard/redress, consumer education and healthy environment (Makela, & Peters, 2004). The European Union can be an example of a society in which consumer awareness is an important area of discussion and plenty of programs, policies and training procedures have been implemented. All the actions undertaken resulted in the improvement of the situation of consumers. Analyses show that one can notice a progress in the conditions for consumers from the EU. This situation is caused mainly by an increase in the level of knowledge of consumers and their trust indicators. It shall be underlined that consumers know their rights better. What is more, they are also convinced that their rights are respected by companies. They also feel protected by the actions

and programs of public authorities and non-governmental consumer associations. Analyses also show that compliance by retailers with consumer rules has indeed improved (<http://collections.internetmemory.org/>). This paper will present the general characteristics of the situation of consumer awareness, then the policies and directions of change and finally consumer protection information.

11.1. Consumer awareness programs

Since 2012 the strategic vision on consumer policy called European Consumer Agenda is in place. It is adopted by the European Commission and it empowers consumers and increases their participation, by identifying the key measure. The agenda outlines 62 action points focused around 4 issues:

1. promoting consumer safety,
2. enhancing consumer rights knowledge,
3. strengthening the enforcement of consumer rules,
4. integrating consumer interests into key sectorial policies.

The above mentioned issues and therefore European consumer awareness programs are based on thorough analysis of consumer activity. Therefore, in order to adjust consumer awareness programs to European consumers, market monitoring tools are in place. Consumer scoreboards are aimed at showing how the single market works for European consumers by identifying problems. Data provided by consumer scoreboards allow estimating what is the effect of ongoing consumer policies and what are the necessary changes and improvements. Due to the fact that the data has been provided in alternate years since 2008 for all Member states, it is possible to benchmark consumer policies performance over time (<https://ec.europa.eu/info/>). There are two main editions of consumer scoreboards:

- ✓ Consumer Condition Scoreboard.
- ✓ Consumer Markets Scoreboard.

Consumer Condition Scoreboard gathers and presents data within which first of all there are national consumer conditions, then cross-border trade and finally the development of e-commerce. It analyzes national conditions for consumers in three areas: knowledge and trust, compliance and enforcement and complaints and dispute resolution. The base for this analysis is given by the data collected in surveys carried out among consumers and retailers.

The second type of scoreboard which is Consumer Markets Scoreboard gathers information about the performance of 52 specific consumer markets including 21 goods and 31 services markets. This scoreboard is based on several indicators including (<https://ec.europa.eu/info/>):

- ✓ Comparability;
- ✓ Trust;
- ✓ Expectations;
- ✓ Choice;
- ✓ Overall detriment;
- ✓ Complaints;
- ✓ Switching.

Comparability is understood as the level of how easy or difficult it is to compare goods or services of a particular offer. Trust is defined as the extent to which consumers believe that companies (retailers and suppliers) will comply with rules that protect consumers. Expectations means to what level market can reach consumer expectations, what is connected further on with consumer satisfaction. Choice is understood as the extent to which consumers are happy with the amount of goods and services, but also retailers and suppliers who offer them. Overall, detriment refers to the amount of consumers who had problems on the market and the extent to which these problems caused detriment (not only financial loss) to consumers. These five indicators create Market Performance Indicator, which is a basis for the ranking of the markets. Complaints understood as propensity of consumers to complain about problems experienced with goods or services, both to retailers themselves but also to third parties. Switching means changing tariffs or providers. These two indicators are not included in the calculation of the Market Performance Indicator.

Although market monitoring tools, mentioned above are crucial for the analysis of the effectiveness of programs launched by the bodies at national and European level, it shall be underlined that EU legislation creates a basis for all tools and programs protecting consumers. Unfortunately, due to the fact that there are around 90 European Union directives covering consumer protection, the legislation is complex and sometimes inconsistent. Sometimes it can be transferred to Member States law differently from nation to nation. Sometimes the directives themselves can be inconsistent. In case a dispute arises, consumers are unable to directly invoke the directive against a trader. It is up to the courts in the Member State to apply and interpret these regulations and they can request additional interpretation from the European Court of Justice through the preliminary ruling procedure, which is rather infrequent (Twigg-Flesner, 2012: 20). Therefore, legal basis for European consumer rights protection programs consists of gaps, which need further improvement.

One of the examples of the improvement is the Consumer Protection cooperation Network. According to the provisions of the Consumer Protection Cooperation Regulation, national authorities responsible for the enforcement of consumer protection laws cooperate in the form of a European enforcement network – Consumer Protection Cooperation network. It eases the situation in which there are cross-border violations of consumer rights. The network allows the authority of the country (from the European Union) in which the consumer rights were violated to call on the counterpart in the country where the retailer is located, in order to demand action to stop the violation. Furthermore, the network annually also identifies common enforcement priorities. Afterwards it launches specific activities such as sweeps – systematic coordinated checks performed simultaneously in different Member States in order to identify consumer rights which are violated in the particular online sector. Such activities which are undertaken enable the relevant national authorities to undertake appropriate action in order to ensure that non-compliant websites are corrected and/or closed.

Additionally, the European Judicial Network will be described. It is a network of national contact points which supports judicial cooperation in criminal matters. It also helps with consumer issues. The network support can be applied not only by individuals or groups of consumers, but also by

small and medium-sized enterprises which are confronted with cross-border disputes in the course of their business.

11.2. Consumer protection information

Several tools whose aims are to empower consumers and provide them with clear, simple and transparent information are developed. Among the very important, legally non-binding tools there are two networks:

- ✓ European Consumer Centres Network.
- ✓ European Enterprise Network.

The European Consumer Centres Network (abbreviated as ECC-Net) is a network of consumer centers located in the member states of the European Union as well as in Iceland and Norway. It provides information in the native tongues of the particular member states regarding consumer rights. It also assists in resolving disputes in a situation where the consumer and retailer or supplier involved in it are coming from two different European countries. ECC-Net can help consumers who live in the European Union, Iceland or Norway by (<https://ec.europa.eu/info/live-work-travel-eu/>):

- ✓ explaining rights which a consumer have,
- ✓ helping to settle a dispute with a seller who is based in another EU country (or Iceland or Norway),
- ✓ guiding by telling who to contact if they cannot help.

The European Consumer Centre Network also publishes papers in the form of guides and advice on common consumer problems, such as:

- ✓ Avoiding risks of counterfeit products;
- ✓ Air Passenger rights;
- ✓ Buying a car from another EU country;
- ✓ Timeshares;
- ✓ Extended warranties;
- ✓ Refunds;
- ✓ Online fraud;
- ✓ E-commerce trust marks;
- ✓ Settling small international disputes;

- ✓ Air passenger rights;
- ✓ Online shopping in the EU.

The Enterprise Europe Network is a network which main goal is to help businesses innovate and grow on an international scale. It is the world's largest (active in more than 60 countries) support network for small and medium-sized enterprises (SMEs). It consists of more than 600 member organizations with more than 3000 experts. Even though their main goal is to support SMEs, they also disseminate information on consumer legislation, mainly to SMEs themselves. Member organizations include: technology poles, innovation support organizations, universities and research institutes, regional development organizations, chambers of commerce and industry (<https://een.ec.europa.eu/>).

Another important tool which supports consumers with information on their rights is information campaigns. European Commission believes that in order to use consumer rights under EU law correctly at every moment, consumers should be aware of them. This is one of the reasons for which the European Commission has organized awareness raising campaigns which “inform citizens of their rights under EU consumer law and pointing them to the right places where they can get advice and help in case of questions or problems” (<http://ec.europa.eu/newsroom/>). The campaigns are sometimes focusing on the general idea of educating consumers in their rights and where to look for information or help. On the other hand, some campaigns are much more focused on particular markets and the protection of rights on them like consumer credits, online purchasing etc. As an example, since 2014 one can see the Consumer Rights Awareness Campaign, whose aim was to increase general knowledge both among consumers but also traders about consumer rights which are valid across European Union. The campaign was available online but also in the form of flyers, video clips, infographics or factsheets. It showed in a very clear way the most common consumer rights (Young Europe, 2018). There is an EU website which gathers the majority of campaigns. The aim of the website is to enable all bodies to use the materials and either use it for own purposes or share it and inform others. The idea behind it is to spread consumer awareness. The campaigns are in the form of posters, flyers, presentations, videos, infographics and banners (Young Europe, 2018).

What is more, there are plenty of guides published by European Union bodies whose aim is to educate consumers and to help them in understanding their rights. There is an emphasis put not only on informing consumers, but also on educating them. There can be found several tools which support consumers in the form of online courses such as “Your Europe” website, where necessary information is gathered on different markets and rights or activities which might be helpful (Young Europe, 2018).

Trainings aimed at consumer awareness are very important. In the European Union emphasis is laid both on informing consumers about their rights but also on educating and training. One of the good practices is Consumers Classroom. It is a multilingual community website focused on consumer education. The target of this activity are teachers of students between 12 and 18-year-old situated in the European Union. The website not only promotes consumer education but it encourages its teaching in European secondary schools. Within the website tools there is Inter-School competition, whose aim is to encourage school work internationally and to collaborate with other schools across the EU and create inter-school projects on consumers (<http://ec.europa.eu/chafea/>).

11.3. Direction of changes in consumer protection

Consumer protection programs face plenty of new challenges that appeared on the market across the European Union, but also globally. First of all, they emerge as a response to new technologies and new trends in consumer behavior corresponding to it. There occurs a development of new trends such as sharing economy, crowdsourcing or prosumer, whose rise in popularity demands development of a completely new approach to consumers and their rights protection. Furthermore, visible social exclusion in several areas is still, but what is also emphasized is consumer mood which is changeable and unstable in time (<http://www.europarl.europa.eu/stoa/>).

In the light of past economic crisis, the European Commission’s consumer agenda defined sectors of particular importance including:

- ✓ food,
- ✓ transport,
- ✓ electronic communications,

✓ and financial services.

The above mentioned sectors are treated as crucial due to the fact that they affect the basic interests of all consumers in essential goods and services. In order to strengthen consumer safety, the European Commission identified six objectives for the near future:

- ✓ to improve the legal framework on product and service safety and to enhance the market surveillance framework;
- ✓ to reinforce safety in the food chain;
- ✓ to improve information as well as the process of raising awareness of consumer rights and interests among both consumers and traders;
- ✓ to build knowledge and capacity for more effective consumer participation in the market;
- ✓ to effectively enforce consumer law, focusing on key sectors;
- ✓ to give consumers efficient ways to solve disputes.

Among the above mentioned objectives, there are two which include consumer rights awareness programs within which information, education and as a result knowledge of consumers are main focus.

What is more, a reference to consumer awareness can be noticed in some other documents for instance in the Commission Work Program 2015, as there is a goal to create a Connected Digital Market which embraces consumers as well. As a result, it is stated that the Commission among others, will simplify the rules for consumers who make online and digital purchases. Furthermore, within the priority to ensure a Resilient Energy Union with a Forward-Looking Climate Change Policy, it is mentioned that the Commission among others will adopt a Strategic Framework for the Energy Union setting out the key actions to be taken in order to, for example, improve consumer participation. The Commission also notes in its program that it will start preparation on delivering more benefits to consumers through the single market for retail financial services (<http://ec.europa.eu/atwork/>).

Conclusions

It shall be emphasized that overall situation of consumers has improved. Consumers access markets considerably better than in previous years. They have a higher level of trust and satisfaction, but also a much higher level of knowledge about their rights and institutions which can help them. This situation is caused by the fact that there are successful programs launched which are aimed at raising consumer awareness. The program is based on legal but also legally-non-binding tools within which there are directives, monitoring tools and informative and educating tools and networks. The combination of all these tools leads to proper process of building and strengthening of consumer awareness of their rights.

Over the past decades, Europe has created an internal market, opened borders and unified national currencies. Efforts were made to expand the borders of the European Union, and consequently, decisions in this area were implemented by including in the EU structures new countries, in particular the countries of the former communist bloc. After the accession of new countries to the European Union, they undertook a significant but effective legislative effort in the field of implementing EU law and institutions into national regulations. The creation of a legal and institutional basis of consumer policy in the newly included countries in line with European standards required the issuance a lot of new or amendments to existing laws.

One should remember that in the European Union there is no single, compact code of consumer protection, containing provisions including all EU directives concerning very diverse issues; instead, an easier concept of partial solutions was developed, aimed at developing a systematic transformation of new legal and institutional regulations related to protection of consumer interests on the market, in each individual member states.

Thanks to this approach, unified market control procedures, principles of organization of institutions and structures involved in shaping and implementing consumer policy were introduced to all European Union countries. Moreover, standardized solutions regarding sources of financing of this policy were adopted. It was important to organize the scope of competences of administrative bodies, of both the EU and of the government of individual member states in this area.

Through these activities, the consumer, treated as both the collective subject of the market and as an individual, does not remain unprotected throughout the European Union. Legal protection is guaranteed not only by the provisions of the EU treaties, but also by the constitutions of the individual member states. In addition, detailed consumer rights are regulated by directives and regulations promoted by the laws of individual member

states, and compliance with them is achieved by an appropriate system of national and EU supervision.

This protection is exercised by relevant government bodies responsible for the implementation of consumer policy in a given country, market control institutions supported by the consumer movement and the activities of local self-governments, industry arbitrations, consumer ombudsmen, etc. And finally, thanks to the mass media, information and educational institutions as well organizations informing and shaping consumer awareness, the protection of consumer interests in the European Union is becoming more and more effective.

The real verifier of the status of achievements in this area is the state of public opinion, prevailing the common belief that someone is guarding the needs and interests of the citizen – the consumer, i.e. you can turn to someone for help or advice. After the integration of individual states of the European Union, all citizens have the same rights as consumers and the same way to protect their market interests. Nevertheless, the main problem that still exists throughout the European Union is associated with a very low level of consumer awareness regarding their rights.

Under these circumstances, it is difficult to count on the fact that weaker market participants will constitute a sufficiently strong pressure group for unreliable entrepreneurs to enforce changes in their practices or to be creative in seeking information about applicable regulations and their rights.

All this indicates the need to further intensive information and education activities within the entire EU and state entities set up for the protection of the consumer, all consumer organizations and local government bodies. The integration of consumer protection and education activities in all Member States is also becoming increasingly important. This requires building an appropriate, well-organized and efficient support network, analyzing the best practices in the field of systems, adjustment, integration and support for consumers not only in the individual countries of the European Union, but opening up to experiences from other countries and even continents.

Finally, it should be emphasized that in the conditions of the modern market economy, the ever-increasing globalization processes, with simultaneous explanations of internal political and social problems of individual

countries or entire regions, the issue of consumer's interests protection is of particular importance. Actions in the field of consumer interest protection should be arranged in a well-functioning system. Its interrelated elements should be consumers as entities of protection and protected values as well as institutional forms of protection aimed at implementing rights and enforcing consumer claims. Improving the implementation of tasks under this system should be accompanied by appropriate, effective information and education policy, which is undoubtedly supported by this book.

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A

Administrative model	A system of consumer protection in which it is the administration that exercises the consumer policy. Consumer protection is usually performed by a single, specialized administrative body (usually situated in economic ministries), which usually has a well-developed structure throughout the country.
Alternative dispute resolution (ADR)	Any method of resolving disputes without litigation. Abbreviated as ADR. Public courts may be asked to review the validity of ADR methods, but they will rarely overturn ADR decisions and awards if the disputing parties formed a valid contract to abide by them. Arbitration and mediation are the two major forms of ADR. Alternative Dispute Resolution refers to any means of settling disputes outside of the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration. As burgeoning court queues, rising costs of litigation, and time delays continue to plague litigants, more states have begun experimenting with ADR programs. Some of these programs are voluntary; others are mandatory. While the two most common forms of ADR are arbitration and mediation, negotiation is almost always attempted first to resolve a dispute. It is the preeminent mode of dispute resolution. Negotiation allows the parties to meet in order to settle a dispute. The main advantage of this form of dispute settlement is that it allows the parties themselves to control the process and the solution.
Anti-consumption	Anti-consumption literally means against consumption, yet the word is not synonymous with alternative, conscientious, or green consumption; neither does anti-consumption merely comprise the study of ethics, sustainability, or public policy. Anti-consumption research focuses on consumers' reasons for avoiding a product or brand. A complete understanding of consumers' decisions requires careful study from both orientations. Alternative, conscientious, green, and sustainable consumption simply describe various forms of pro-social consumption; anti-consumption, on the other hand, focuses on phenomena that researchers traditionally have ignored.
Asymmetric information	Asymmetric information, also known as information failure, occurs when one party to an economic transaction possesses greater material knowledge than the other party. This normally manifests when the seller of a good or service has greater knowledge than the buyer, although the reverse is possible. Almost all economic transactions involve information asymmetries. Asymmetric information is the specialization and division of knowledge in society as applied to economic trade. For example, medical doctors typically know more about

medical practice than their patients. After all, through extensive education and training, doctors specialize in medicine, whereas most patients do not. The same principle applies to architects, teachers, police officers, attorneys, engineers, fitness instructors, and other specially trained professionals.

B

- Bold consumer** A consumer acting improperly, causing troubles to every stakeholder around him (companies, personnel, and even other customers on the scene). In short, a customer disrupting the proper conduct of a business through an unsuitable and incorrect behaviour, and who cannot be fully satisfied.
- Brand attachment** The emotional connection between humans and brands. A particularly strong attachment of a consumer to a certain brand, despite any purely functional feature. This attachment comes from affection, connection and passion for the brand.
- Brand community** A community formed on the basis of attachment to a product or marque. Recent developments in marketing and in research in consumer behavior result in stressing the connection between brand, individual identity and culture. Among the concepts developed to explain the behavior of consumers, the concept of a brand community focuses on the connections between consumers. A brand community can be defined as an enduring self-selected group of actors sharing a system of values, standards and representations (a culture) and recognizing bonds of membership with each other and with the whole. Brand communities are characterized in shared consciousness, rituals and traditions, and a sense of moral responsibility. A brand community is a specialized, non-geographically bound community, based on a structured set of social relations among admirers of a brand.
- Business ethics** Business ethics (also known as corporate ethics) is a form of applied ethics or professional ethics that examines ethical principles and moral or ethical problems that arise in a business environment. It applies to all aspects of business conduct and is relevant to the conduct of individuals and entire organizations. Business ethics is the social and ethical responsibility of the companies to their customers, their staff, their business partners, their local community, society in general and the natural environment, responsibility that is as important as, or more important than their responsibility to provide financial returns to their shareholders. Study of ethical dimensions of productive organizations and commercial activities.

C

- Change management** Change management is a systematic approach to dealing with the transition or transformation of an organization's goals, processes or technologies. The purpose of change management is to implement strategies for effecting change, controlling change and helping people to adapt to change. Such strategies include having a structured procedure for requesting a change, as well as mechanisms for responding to requests and following them up.
- Commodity** A substance or product that can be traded, bought, or sold.
- Commodity fetishism** Theorized by Karl Marx, commodity fetishism links the beliefs of ancient people giving objects magical or divine properties with modern-times "adoration" for

commodities. It is seen as a reflection of humanity's blindness as people do not realize that commodities are the result of human labour and, in some cases, exploitation.

Company strategy

Company strategy or business strategy can be understood as the course of action or set of decisions which assist the entrepreneurs in achieving specific business objectives. It is the master plan that the management uses to secure a competitive position in the market, carry on its operations, please customers and achieve the desired ends of the business. A business strategy is a set of competitive moves and actions that business uses to attract customers, compete successfully, strengthening performance, and achieve organizational goals. It outlines how business should be carried out to reach the desired ends. Business strategy equips the top management with an integrated framework, to discover, analyze and exploit beneficial opportunities, to sense and meet potential threats, to make optimum use of resources and strengths, to counterbalance weakness.

Competition law

A law that promotes or seeks to maintain market competition by regulating anti-competitive conduct by companies. Competition law is implemented through public and private enforcement. Competition law is known as "antitrust law" in the United States for historical reasons, and as "anti-monopoly law" in China and Russia. In previous years it has been known as trade practices law in the United Kingdom and Australia. In the European Union, it is referred to as both antitrust and competition law.

Conspicuous consumption

Conspicuous consumption refers to the competitive and extravagant consumption practices and leisure activities that aim to indicate membership to a superior social class. A kind of behaviour that induces using consumption as a way to pretend to belong to a "higher class", showing off an apparent luxury that does not, in fact, reflect the income or belonging of the individual.

Consumer

A person that uses economic services or commodities

Consumer activism

The range of activities undertaken by consumers or NGOs to make demands or state their views about certain causes linked directly or indirectly to a company. In the extreme case, such movement could push for a complete boycott of a product or brand. These days, consumer activism often happens both online and offline and can cross borders. Companies could be targeted because of something they did (e.g., sourcing from suppliers who rely on child labour) or simply because of their association with a certain country or region (e.g., Danish companies in the wake of the Muslim cartoon controversy). Targeted companies can fight back, comply or ignore the demands.

Consumer awareness

The understanding by an individual of their rights as a consumer concerning available products and services being marketed and sold. The concept involves four categories including safety, choice, information, and the right to be heard. The first declaration of consumer rights was established in the US in 1962. Consumer activist Ralph Nader is referred to as the father of the consumer movement. The level of understanding and recognizing consumers' rights and responsibilities by consumers.

Consumer behavior	A process of obtaining the resources and consuming them in order to satisfy the consumer's needs
Consumer code model	A consumer law system where there is a consumer code, which is a normative act of a comprehensive nature and containing regulations belonging to two basic branches of law, i.e. civil and administrative law. The advantage of this model is the concentration of the entirety of the law on consumer protection in one main legal act.
Consumer condition scoreboard	It gathers and presents data referring first of all to national consumer conditions, then cross-border trade and finally the development of e-commerce. It analyses national conditions for consumers in three areas: knowledge and trust, compliance and enforcement and complaints and dispute resolution.
Consumer interest	The body of law that pertains to things the producers of goods must do to protect consumers from harm.
Consumer interest protection	A set of activities directed at the protection of consumers when their rights and interests are being threatened.
Consumer markets scoreboard	It gathers information about performance of 52 specific consumer markets including 21 goods and 31 services markets.
Consumer movement	Social movements which aim at transforming consumption or marketing related order of environment and promoting consumer protection.
Consumer misbehavior	Behavioural acts by consumers, who violate the generally accepted norms of conduct in consumption situations, and thus disrupt the consumption order.
Consumer policy	Consumer policy is generally aware of the actions of the state, aimed at shaping such conditions on market that facilitate the pursuit of consumers' aspirations to the fullest possible satisfaction their needs form from their income.
Consumer protection	Consumer protection, therefore, refers to laws and other forms of government regulation designed to protect the rights of consumers. Consumer protection is based on consumer rights, or the idea that consumers have an inherent right to basic health and safety.
Consumer rights	Generally accepted basic consumer rights are (1) Right to safety: protection from hazardous goods. (2) Right to be informed: availability of information required for weighing alternatives, and protection from false and misleading claims in advertising and labeling practices. (3) Right to choose: availability of competing goods and services that offer alternatives in terms of price, quality, service. (4) Right to be heard: assurance that government will take full cognizance of the concerns of consumers, and will act with sympathy and dispatch through statutes and simple and expeditious administrative procedures. Consumers' rights to be treated fairly, have products which meet acceptable standards and a right to redress if something goes wrong.
Consumer rights awareness	Knowledge of the product quality, the education about the various types of hazards and problems associated with marketing of a product, the knowledge about 'Consumer Rights', the knowledge about consumer's own responsibilities.
Consumer rights protection	The protection of buyers of goods and services against low quality or dangerous products and advertisements that deceive people.

- Consumer value** Customer value, which is linked closely to customer satisfaction and loyalty, is a critical aspect of today's effective marketing strategies. Businesses need to research and consider what customers care about in order to deliver products and services on which they want to spend their money. To get ahead of the cut-throat competition they face in the market, businesses need to take into account what their well-informed customers are thinking and feeling. Only by doing so can businesses enhance customer value.
- Consumerism** Consumerism is the belief that personal wellbeing and happiness depends to a very large extent on the level of personal consumption, particularly on the purchase of material goods. The idea is not simply that wellbeing depends upon a standard of living above some threshold, but that at the center of happiness is consumption and material possessions. A consumerist society is one in which people devote a great deal of time, energy, resources and thought to "consuming". The general view of life in a consumerist society is consumption is good, and more consumption is even better. All the activities undertaken by state, social, and private institutions for the benefit of consumers. In a broader sense, consumerism is a movement designed to increase the rights of consumers in their relation with producers and providers of goods and services. The protection or promotion of the interests of consumers.
- Consumer vulnerability** There are three dimensions: technical (ignorance of product/service aspects), factual (consumer incapacity to contest the vendor), legal (lack of legal, accounting and economic expertise).
- Consumer-oriented marketing** As today the market is characterized by a number of products, a variety of diverse customers and stiff competition. In such a scenario, marketing with the consumer in mind has become a necessity. Marketing managers are shifting their focus from selling a product to creating something that is needed. Starting from product creation to selling and servicing, consumer focus is given the utmost priority. The focus group discussions, surveys and feedbacks done by companies to understand consumers are some examples to show how much importance is given to consumers. In the recent past, most companies used to adopt a product oriented approach to introduce and promote a product in the market. This was considered to be a naive endeavor of creating and marketing a product without any research done to find out what actually the consumer wants or any other related information to seek profits. This is how the consumer oriented approach came into practice in marketing. Before implementing on the consumer oriented marketing strategy, following are certain fundamentals to abide by: Which market segment the business should target at? Whether the consumers they target belong to a specific gender, age and culture? This can be found out easily by conducting a thorough survey at location or areas where the products or services are being sold out. How commercial are those markets? Generally, the biggest markets are more profitable for the business. Moreover, what are the buying habits of that market? For instance, when you are aware about the need of a consumer for a certain product or service it can be advantageous to know that information earlier. Not long ago before this strategy was constructed, marketing activities were carried out simply to promote products and to increase market share. In today's competitive environ-

ment, marketing activities are structured to fulfill the needs/wants of the consumers. Modern marketing has now emphasized the importance of consumer oriented marketing concept as the marketing activities are structured on the notion and purpose of thought such as: Majority of the consumers know what they need. Orientation to consumer's needs/wants is set as the main target for a successful implementation of marketing activities. Marketing research can provide the best result in determining the needs/wants of the consumers. Satisfied consumers will appreciate producers by doing a repetitive purchase. Consumer oriented marketing is seen as an alternative to the traditional oriented marketing which is where a product that is being endorsed and promoted is the center of attention to the marketers. The major three focuses to consumer oriented marketing is seen as an influence on what the consumer purchases: Size – this represents the size of the brand or market that makes the brand stand out amongst its competitors. This helps to create a model where the brand is able to analyze its own size of the market and the saturation within the market. Congestion – some markets are seen as congested and persuading a consumer in the congested market is difficult. The consumer oriented marketing has to work at its best to influence the consumers to believe that this is the right product that they need. Purchasing Power - consumer oriented marketing must be directed at the right target audience. The purchasing power is the right determinant of how the product is being marketed. This involves a lot of research work to gather the right information about the consumers. Consumer oriented marketing has a constant focus on all areas of the business i.e. philosophy, goals, vision, the marketing strategies and website. Therefore, the consumer oriented marketing should work hard to gratify and fulfill the needs/wants of a defined group of consumers in consideration of the fact that it can never be all things to all people.

Contracting party Entity that enters into a binding agreement with one or more other contracting parties and thus accepts the benefits and obligations specified therein. For a contract to be valid, every contracting party to a contract must be a competent party.

Contractual terms “Any provision forming part of a contract”. Each term gives rise to a contractual obligation, breach of which can give rise to litigation. Not all terms are stated expressly and some terms carry less legal gravity as they are peripheral to the objectives of the contract.

Corporate Social Responsibility (CSR) Despite CSR having become a *lingua franca* of business and business politics, there is no dominant paradigm of CSR and no commonly agreed on definition. CSR can be defined narrowly as an obligation to pursue profits within the boundaries of society's rules and regulations. This is the minimalist definition advocated by free market liberalists. A more common understanding sees CSR as a broad concept requiring that social and environmental concerns be factored into the equation, as well. Business must take into consideration - and seek to either avoid or rectify - the harmful effects of its activities beyond simply what the law requires. Social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time. A company must meet its responsibilities

in the economic sphere - that is, toward its shareholders, employees, and customers. In the legal sphere, it is required that the company conducts its business within the framework of the law. Furthermore, it is *expected* that companies do and will behave ethically, and it is *desired* that they engage in discretionary and philanthropic activities. Calling attention to social expectations is a reminder that business earns its "license to operate" from civil society and must act in accordance with accepted social norms in order to prosper and survive in the long term. This definition also situates CSR within a historical context: Business conduct that was previously tolerated can now be criticized in the media, thereby illustrating the social and historical contextual nature of such expectations. Corporate social responsibility can also be seen as a business strategy that helps corporations negotiate their relationships with the wider society. The strategy can include mapping and evaluating the demands of stakeholders and the development and implementation of actions and policies to meet - or ignore - such demands. Following this view, CSR addresses how corporations might handle economic, social, or environmental issues. This type of definition points to the management of externalities that corporations undertake on behalf of their stakeholders, while also illustrating the flexibility of the CSR concept as it allows for descriptive analysis. It has also been pointed out that the well-being of business is dependent on the well-being of society. "Doing well by doing good" is a popular maxim that builds on the so-called business argument for CSR. The latter proposes that CSR pays for itself by, for instance, improving the company's reputation. A good reputation can attract customers, improve and secure employee satisfaction, attract investors, and create a halo effect, which in turn generates positive media coverage and autonomy. The business argument, however, has been notoriously difficult to prove.

Court model	Court model is system of consumer protection based on a highly advanced operation of courts, where common access and short procedures (the so called courts of petty matters, courts of small claims) guarantee quick compensation. This model also assumes the functioning of various public institutions executing and coordinating the consumer protection policy. The most characteristic feature for this model, however, is the presence of fast-operating courts, which only deal with deciding consumer litigation.
Court practice	In English law. A court attached to the court of king's bench, which heard and determined common matters of business and ordinary motions for writs of mandamus, prohibition, etc. It was usually called the "bail court" It was held by one of the puisne justices of the king's bench.
Customer	A party that receives or consumes products (goods or services) and has the ability to choose between different products and suppliers.
Customer care	The work of looking after customers and ensuring their satisfaction with one's business and its goods or services.
Customer complaints	An expression of dissatisfaction on a consumer's behalf to a responsible party. It can also be described in a positive sense as a report from a consumer providing documentation about a problem with a product or service. In fact, some modern business consultants urge businesses to view customer com-

plaints as a gift. Consumer complaints are usually informal complaints directly addressed to a company or public service provider, and most consumers manage to resolve problems with products and services in this way, but it sometimes requires persistence.

Customer experience	The customer's perceptions and related feelings caused by the one-off and cumulative effect of interactions with a supplier's employees, systems, channels or products.
Customer loyalty	Customer loyalty is both an attitudinal and behavioral tendency to favor one brand over all others, whether due to satisfaction with the product or service, its convenience or performance, or simply familiarity and comfort with the brand. Customer loyalty encourages consumers to shop more consistently, spend a greater share of wallet, and feel positive about a shopping experience, helping attract consumers to familiar brands in the face of a competitive environment.
Customer service	The provision of service to customers before, during and after a purchase. The perception of success of such interactions is dependent on employees "who can adjust themselves to the personality of the guest". Customer service concerns the priority an organization assigns to customer service relative to components such as product innovation and pricing. In this sense, an organization that values good customer service may spend more money in training employees than the average organization or may proactively interview customers for feedback.

D

Decision-making	The process of making choices by identifying a decision, gathering information, and assessing alternative resolutions. Using a step-by-step decision-making process can help you make more deliberate, thoughtful decisions by organizing relevant information and defining alternatives. This approach increases the chances that you will choose the most satisfying alternative possible.
Deficit needs	Maslow's five-stage model of the hierarchy of needs can be divided into deficiency needs and growth needs. The first four levels (i.e., physiological needs, safety needs, love and belongingness needs and esteem needs) are often referred to as deficiency needs (<i>D-needs</i>), and the top level is known as growth or being needs (<i>B-needs</i>). Deficiency needs arise due to deprivation and are said to motivate people when they are unmet. Also, the motivation to fulfill such needs will become stronger the longer the duration they are denied. For example, the longer a person goes without food, the hungrier they will become.
Distance contract	It may be concluded by any means (by telephone, e-mail, catalogue, etc.) which do not require the simultaneous physical presence of the parties to the contract.
Distributed regulation model	The consumer law system which is characterized by the absence of one act of consumer law, either in the form of a code or specific acts, and instead there are numerous special acts regulating consumer protection issues.

E

E-commerce	It is the activity of buying or selling of products on online services or over the Internet. Electronic commerce draws on technologies such as mobile commerce, electronic funds transfer, supply chain management, Internet marketing, online transaction processing, electronic data interchange (EDI), inventory management systems, and automated data collection systems. Modern electronic commerce typically uses the World Wide Web for at least one part of the transaction's life cycle although it may also use other technologies such as e-mail. Typical e-commerce transactions include the purchase of online books (such as Amazon) and music purchases (music download in the form of digital distribution such as iTunes Store), and to a less extent, customized/personalized online liquor store inventory services. There are three areas of e-commerce: online retailing, electric markets, and online auctions. E-commerce is supported by electronic business.
Engel's law	Established in 1857, this law states that increasing incomes leads to a decrease in the proportion taken by food and non-alcoholic beverages in the total expenditure of households. By inversion, a decrease in the proportion taken by food and non-alcoholic beverages reflects a better income.
Enterprise Europe Network	A network which main goal is to help businesses innovate and grow on an international scale. It is the world's largest support network for small and medium-sized enterprises (SMEs) with international ambitions. The Network is active in more than 60 countries worldwide. It brings together 3,000 experts from more than 600 member organizations – all renowned for their excellence in business support. Member organizations include: technology poles, innovation support organizations, universities and research institutes, regional development organizations, chambers of commerce and industry. Individual businesses can't become Network members, but they can enjoy the many services offered.
Ethical behavior	Ethical behaviour is characterized by honesty, fairness and equity in interpersonal, professional and academic relationships and in research and scholarly activities. Ethical behaviour respects the dignity, diversity and rights of individuals and groups of people. This definition is not a denial of the existence of other ethical duties with respect to practice, professional service delivery, and research.
Ethics	Moral principles that govern a person's behaviour or the conducting of an activity.
Ethics of Competition	A set of entrepreneurs' and business managers' duties and attitudes towards different categories of stakeholders, especially towards customers and employees, consisting in no cheating business behaviors, both declared or effective behaviors.
European Consumer Centre (ECC-Net)	It is an EU-wide network. There is a national contact point called European Consumer Centre (ECC) in all 28 EU Member States, in Iceland and Norway. ECCs provide consumers with information about the opportunities and risks of the European Single Market and also regarding cross-border consumer topics, such as travel, various services, and the purchase of goods and services. The

ECC-Net is staffed by legal experts who assist consumers free of charge to solve any dispute that may arise with enterprises based in another EU country, Norway, or Iceland. The ECCs are co-financed by the European Commission and national governments aiming to protect consumer rights and ensure that every EU citizen may take full advantage of the European Single Market. Depending on the formal structure some ECCs are hosted by non-governmental organizations (NGOs), governmental bodies, or independent organizations. A network of consumer centers located in the member states of European Union but also in Iceland and Norway. It provides information in native languages of particular member states on consumer rights.

European Order for Payment Procedure (EOP)

The EOP is a new procedure that makes it easier and quicker for creditors to recover uncontested monetary debts, in cross-border cases i.e. where one of the parties lives in a different EU Member State to where the case is to take place. The procedure operates on the basis of standard forms and a uniform process across all EU Member States. It can be used in both civil and commercial matters and does not require the use of lawyers. The procedure is optional and can be used instead of existing procedures under national law. A creditor who obtains an order using this procedure will not have to undertake intermediate steps to enforce the decision in another EU Member State.

European Small Claims Procedure (ESCP)

The European Small Claims Procedure (ESCP) became operational on 1 January 2009, as a special, EU-wide procedure available both to consumers and traders for pursuing cross-border claims within the internal market of a value not exceeding €2000. During the first five years of its existence, however, the ESCP has been used only rarely. According to available statistical data, the average number of claims pursued yearly amounts to as few as 120 per Member State. In many Member States, the number of claims filed was even below 10 per year.

Excessive consumption

Or overconsumption is a situation where resource use has outpaced the sustainable capacity of the ecosystem. A prolonged pattern of overconsumption leads to environmental degradation and the eventual loss of resource bases.

Experiential consumption

Purchasing products because of the way we feel or the positive experiences we get because of them. A type of consumption that primarily answers a quest of identity through experience, via the research of pleasure, fun, sensory stimulation. It is mostly focused on cognitive processes.

F

Flow

Formulated by Csikszentmihalyi, the state of flow describes a mental state in which the individual is completely immersed in the activity, fully concentrated and absorbed by the task, which provides them satisfaction.

Fair trade

Fair trade is an institutional arrangement designed to help producers in developing countries achieve better trading conditions. Members of the fair trade movement advocate the payment of higher prices to exporters, as well as improved social and environmental standards. The movement focuses in particular on commodities, or products which are typically exported from developing countries to developed countries, but also consumed in domestic markets (e.g. Brazil, India and Bangladesh) most notably handicrafts, coffee,

	cocoa, wine, sugar, fresh fruit, chocolate, flowers and gold. The movement seeks to promote greater equity in international trading partnerships through dialogue, transparency, and respect.
Formal legal action	The process of enforcing a nation's laws by proceeding within court system. One individual or entity prosecutes another for a criminal action or civil wrong doing, or to protect an individual or entity's rights from being violated.
Framework regulation model	The consumer law system found in countries that have passed consumer protection laws, is based on a formal premise, which is the adoption of the law on consumer protection.
Free market	The free market is an economic system based on supply and demand with little or no government control. It is a summary description of all voluntary exchanges that take place in a given economic environment. Free markets are characterized by a spontaneous and decentralized order of arrangements through which individuals make economic decisions. Based on its political and legal rules, a country's free market economy may range between very large or entirely black market.

G

German model	A system of consumer protection in this model the consumer policy is executed by means of strong consumer organizations. Consumer organizations are state-independent citizen associations that deal with the protection of buyer rights. They are present on the local and national level, and they have a joint representation in community institutions, which allows them to act on particular issues arising between buyers and vendors. They also fight to bring about changes in legal regulations that favor producers and traders.
Global business ethics	The behavior of doing the <i>right thing</i> at work, meaning adopting a non-corruptive behavior, including environmental protection, human rights considerations and transparency in actions.
Global firm	The case of a company which is present in two or several countries being characterized by a specific advantage not reachable by national companies from financial, production, research, development, logistical or marketing perspective
Global industry	The case of strategically positioned at geographical or national markets of companies, position which influence other companies in terms of actions, strategies, behavior, decision making etc.
Global market	The activity of buying or selling goods and services in all the countries of the world, or the value of the goods and services sold.
Growth needs	Self-actualization needs, which are the highest level need. According to Maslow's original theory, a person has to fulfill her deficiency needs before she can move to fulfilling growth needs.

H

Household consumption expenditure	Household final consumption expenditure (HFCE) is a transaction of the national account's use of income account representing consumer spending. It consists of the expenditure incurred by resident households on individual consumption goods and services, including those sold at prices that are not economically
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significant. It also includes various kinds of imputed expenditure of which the imputed rent for services of owner-occupied housing (imputed rents) is generally the most important one. The household sector covers not only those living in traditional households, but also those people living in communal establishments, such as retirement homes, boarding houses and prisons.

I

Imperfect competition	A competitive market situation where there are many sellers, but they are selling heterogeneous (dissimilar) goods as opposed to the perfect competitive market scenario.
Informal dispute resolution	“Informal dispute resolution” means, but is not limited to, consultation between the landlord or landlord’s agent and one or more tenants, or mediation utilizing the services of a third party.
Infrastructure	The infrastructure of a country, society, or organization consists of the basic facilities such as transport, communications, power supplies, and buildings, which enable it to function.
Institution	Establishment, foundation, or organization created to pursue a particular type of endeavor, such as banking by a financial institution. Consistent and organized pattern of behavior or activities (established by law or custom) that is self-regulating in accordance with generally accepted norms. For example, political institutions are involved with (and regulate) competition for power; and economic institutions (such as markets) encourage and regulate production and distribution of goods and services.
Internalization	Process by which individual members of a formal group take on (and make them their own) the attitudes, beliefs, perspectives, and values held by other members. Work ethics, for example, result from the internalization of attitudes toward time and effort.
Irrational consumer behavior	A behavior of consumer internally inconsistent and contrary to consumer’s best interest.

J

Jurisdiction	Power or right of a legal or political agency to exercise its authority over a person, subject matter, or territory. Jurisdiction over a person relates to the authority to try him or her as a defendant. Jurisdiction over a subject matter relates to authority derived from the country’s constitution or laws to consider a particular case. Jurisdiction over a territory relates to the geographic area over which a court has the authority to decide cases.
Justice	Fairness in the way people are dealt with. The system of laws in a country that judges and punishes people.

L

Limited rationality	Also known as bounded rationality, it states that while making a decision, individuals cannot be completely rational as they might not have all the required information, all the required knowledge, and all the required time to analyze everything.
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M

Market	An actual or nominal place where forces of demand and supply operate, and where buyers and sellers interact (directly or through intermediaries) to trade goods, services, or contracts or instruments, for money or barter.
Marketplace	A market or a marketplace is a location where people regularly gather for the purchase and sale of provisions, livestock, and other goods. Some markets operate daily and are said to be permanent markets while others are held once a week or on less frequent specified days such as festival days and are said to be periodic markets. The form that a market adopts is depends on its locality's population, culture, ambient and geographic conditions. The term market covers many types of trading, as market squares, market halls and food halls, and their different varieties. Due to this, marketplaces can be situated both outdoors and indoors.
Materialism	It is a form of philosophical monism which holds that matter is the fundamental substance in nature, and that all things, including mental aspects and consciousness, are results of material interactions.
Misdirected consumption	A portentous phenomenon prompting as a result of competitive industrial system, it has become the interest of many producers and sellers to supply inferior goods, apparently cheap, but in reality, when duly weighed in the balance of cost and utility, incredibly dear.
Misleading advertising	Under the Consumer Protection Act 2007, advertising is seen as misleading if it involves false, misleading or deceptive information that is likely to cause the average consumer to act in a way they might otherwise not. Advertising may also be considered misleading if important information that the average consumer needs to make an informed decision is left out. Misleading advertising covers claims made directly to consumers by manufacturers, distributors and retailers, as well as in advertisements, catalogues, websites etc.
Monopolistic competition	It is a market structure which combines elements of monopoly and competitive markets. Essentially a monopolistic competitive market is one with freedom of entry and exit, but firms can differentiate their products. Therefore, they have an inelastic demand curve and so they can set prices. However, because there is freedom of entry, supernormal profits will encourage more firms to enter the market leading to normal profits in the long term.
Monopoly	Market situation where one producer (or a group of producers acting in concert) controls supply of a good or service, and where the entry of new producers is prevented or highly restricted. Monopolist firms (in their attempt to maximize profits) keep the price high and restrict the output, and show little or no responsiveness to the needs of their customers. Most governments therefore try to control monopolies by (1) imposing price controls, (2) taking over their ownership (called 'nationalization'), or (3) by breaking them up into two or more competing firms. Sometimes governments facilitate the creation of monopolies for reasons of national security, to realize economies of scale for competing internationally, or where two or more producers would be wasteful or pointless (as in the case of utilities).

Moral hazard	A situation in which one party gets involved in a risky event with awareness that it is protected against the risk and the other party will incur the cost.
Moral principles	The principles of right and wrong that are accepted by an individual or a social group.

N

National consumer organization	These organizations <i>define</i> their missions as consumer assistance, protection and/or advocacy. The services they provide vary.
National regulatory organization	An organization that exercises regulatory authority over an industry or profession. The regulatory authority could exist in place of government regulation, or applied in addition to government regulation. Regulatory bodies are meant to exercise their authority only within the scope permitted by law, observing the principles of accountability, impartiality and equality. Administrative and judicial review may also discourage the abuse of authority.

O

Oligopoly	A market structure in which a few firms dominate. A market structure with a small number of firms, none of which can keep the others from having significant influence. The concentration ratio measures the market share of the largest firms.
Ombudsman	A government official appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials. One that investigates, reports on, and helps settle complaints. He/she is administration-independent, appointed for a fixed term, usually by the Parliament. A consumer advocate is usually vested with specified powers.
Online dispute resolution (ODR)	Online dispute resolution (ODR) is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or a combination of all three.

P

Perfect competition	Pure or perfect competition is a theoretical market structure in which the following criteria are met: all firms sell an identical product (the product is a “commodity” or “homogeneous”); all firms are price takers (they cannot influence the market price of their product); market share has no influence on price; buyers have complete or “perfect” information – in the past, present and future – about the product being sold and the prices charged by each firm; resources such as labor are perfectly mobile; and firms can enter or exit the market without cost.
Price gauging	Pricing above the market price when no alternative retailer is available
Private household	‘Private household’ refers to a person or group of persons who occupy the same dwelling and do not have a usual place of residence elsewhere at home or abroad. The household universe is divided into two sub-universes on the basis of whether the household is occupying a collective dwelling or a private dwelling. The latter is a private household.

Q

Quality	Suitable for its intended purpose (fitness for purpose) while satisfying customer expectations.
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R

Rational consumer behavior	Rational behavior is a key assumption used in the study of economics and the choices that people make in pursuit of satisfaction. It builds on the basic premise that people, given the choice, would rather have more than less, that they would rather be better off than worse of.
Regulatory policy	The government's restriction and control over business practices. Regulatory policy provides the frameworks used by agencies when developing rule-makings. It sets forth the guidelines for developing, promulgating, implementing, and enforcing this complex system of public protections
Relationship marketing	Relationship marketing is a facet of customer relationship management (CRM) that focuses on customer loyalty and long-term customer engagement rather than shorter-term goals like customer acquisition and individual sales. The goal of relationship marketing (or customer relationship marketing) is to create strong, even emotional, customer connections to a brand that can lead to ongoing business, free word-of-mouth promotion and information from customers that can generate leads. Relationship marketing stands in contrast to the more traditional transactional marketing approach, which focuses on increasing the number of individual sales. In the transactional model, the return on customer acquisition cost may be insufficient. A customer may be convinced to select that brand one time, but without a strong relationship marketing strategy, the customer may not come back to that brand in the future. While organizations combine elements of both relationship and transactional marketing, customer relationship marketing is starting to play a more important role for many companies. The importance of relationship investment is illustrated in the tenets of relationship marketing. Relationship marketing theorists advocated a differentiated and unique relationship with each customer via the use of computer databases and information processing technologies. The customer tells the firm what he wants. The firm makes it and remembers the customer's Sources for the next time. The learning relationship between a customer and an enterprise gets smarter and smarter with every individual interaction, defining in ever more detail, the customer's own individual needs and tastes. The increasing degree of convenience represents a customer investment that will be lost if he deserts to a competitor. The learning relationship creates what is, essentially a barrier that makes it more difficult for a customer to be promiscuous than to be loyal.
Restitution	Refers both to disgorging something which has been taken, and to compensation for loss or injury done. In civil cases: A remedy associated with unjust enrichment in which the amount of recovery is typically based on the defendant's gain rather than the plaintiff's loss. In criminal cases: Full or partial compensation for loss paid by a criminal to a victim that is ordered as part of a criminal sentence or as a condition of probation.

S

Services marketing	Services marketing refers to the marketing of services as against tangible products. Services marketing first came to the fore in the 1980's when the debate started on whether marketing of services was significantly different
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from that of products so as to be classified as a separate discipline. Prior to this, services were considered just an aid to the production and marketing of goods and hence were not deemed as having separate relevance of their own.

Sharing economy

A mode of consumption whereby goods and services are not owned by a single user, but rather only temporarily accessed by members of a network and underutilized assets are shared either for free or for a fee. Sharing economy also known as the access economy, peer-to-peer economy or collaborative economy.

Socially responsible marketing

A marketing philosophy that a company should take into consideration; "What is in the best interest of society in the present and long term?" is critical of excessive consumerism and environmental damages caused by corporations. It is based on the idea that market offerings must not be only profit-driven, but they must also reinforce social and ethical values for the benefit of citizens. The idea of socially responsible marketing is sometimes viewed as an extension of the concept of Corporate Social Responsibility (CSR). CSR is promoted as a business model to help companies self-regulate, recognizing that their activities impact an assortment of stakeholders, including the general public.

Societal marketing

Societal marketing is a concept in marketing that emphasizes social consciousness as part of the overall marketing plan. Societal marketing is when a company markets a product not only with consumer and company needs in mind, but also the long-term wellbeing of society as a whole. Companies that produce effective societal marketing campaigns incorporate social and ethical considerations into the marketing plan. There are many ways a company can accomplish this goal. The purpose of societal marketing is for a company to meet its needs and the needs of a consumer while considering the long-term good of society. In this type of marketing, a company uses its socially conscious stance as a way to attract consumers who may appreciate the company's desire to market its products with consideration for society. As a result, the company's concern for society, seemingly over profit, positions the company in a favorable light and may help sell more products. Social marketing is often confused with social media and online networking and with the concepts of corporate social responsibility and societal marketing that relate to specific business practices. Businesses might conduct social marketing campaigns that are aimed at prosocial causes but eventually result in improved organizational image and increase in sales and profits. Thus, a sportswear brand has a vested interest in promoting active lifestyle and a beauty products company benefits from a campaign that promotes positive body image in young women to reduce anorexia. Social marketing differs from the organization-centered approach of public relations. In many cases, social marketing has to compete with messages delivered by public relations practitioners in the business sector that promote consumerism and the consumption of alcohol or tobacco, fat and sugary products, lottery, and so on. Social marketing ought to be identified mainly as the domain of government and nonprofit organizations, especially health promotion, and with improving citizens' quality of life. Genuine social marketing campaigns are funded by public resources and are accountable to public interest groups.

Strategic decisions

The decisions that are concerned with whole environment in which the firm operates, the entire resources and the people who form the company and the interface between the two. They have major resource propositions for an organization. These decisions may be concerned with possessing new resources, organizing others or reallocating others. Strategic decisions deal with harmonizing organizational resource capabilities with the threats and opportunities. They deal with the range of organizational activities. It is all about what they want the organization to be like and to be about. Strategic decisions involve a change of major kind since an organization operates in ever-changing environment. They are complex in nature.

Sustainability

Sustainability is a broad discipline, giving students and graduates insights into most aspects of the human world from business to technology to environment and the social sciences. The core skills with which a graduates leaves college or university are highly sought after, especially in a modern world looking to drastically reduce carbon emissions and discover and develop the technologies of the future. Sustainability draws on politics, economics and, philosophy and other social sciences as well as the hard sciences.

U**Unethical behavior**

Unethical actions committed by people who value and care about morality but behave unethically when faced with an opportunity to cheat. Actions that don't conform to the acceptable standards of business operations, failing to do what is right in every situation.

Unethical consumer behavior

Direct or indirect actions that cause businesses or other consumers to lose money or reputation.

Unfair practices

Unfair business practices encompass fraud, misrepresentation, and oppressive or unconscionable acts or practices by business, often against consumers and are prohibited by law in many countries. Unfair business practices include the following acts: deceptive, untrue or misleading advertising, conspiracy to "fix" market prices, monopolization of a particular market, price discrimination, conspiracy to allocate markets or customers.

V**Value marketing**

What benefits a customer gets from a product or what value he perceives about a product and what cost he perceives he has to pay to get these benefits. Value in marketing, also known as customer-perceived value, is the difference between a prospective customer's evaluation of the benefits and costs of one product when compared with others. Value may also be expressed as a straightforward relationship between perceived benefits and perceived costs: $\text{Value} = \text{Benefits} / \text{Cost}$.

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CONSUMEE

In era of globalization, the consumers became a part of processes which in many cases they don't understand, neither are aware of. Because of it the consumer is being perceived by companies and law makers as non-professional individual, who is a weaker agent on the market.

“Enhancing quality in innovative higher education about consumer awareness” is an Erasmus+ project with the main objective to improve the quality of innovative higher education on consumer awareness.

This publication, being one of the results of the project, is the work of an international team of academics together with dozens of students from:

University of Economics in Katowice	Budapest Business School
Howest University of Applied Science	University of Trento
University Savoie Mont Blanc	University of Bucharest
Seinäjoki University of Applied Science	University of ISIK

This team hopes that all readers will find this book a valuable and interesting manual about the consumer rights and in this way will join the group of aware consumers.



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