Intergovernmental Group of Experts on Consumer Law and Policy

(IGE Consumer)

3rd SESSION

9-10 July 2018

Room XVII, Palais des Nations, Geneva

Tuesday, 10 July 2018

Morning Session

Agenda Item 3e. Report of the working groups on electronic commerce and on the protection of vulnerable and disadvantaged consumers, as well as on the latest developments in legal and institutional frameworks

Contribution by

BEUC

The challenge of protecting EU consumers in global online markets

November 2017

verbraucherzentrale
Bundesverband

BEUC The European Consumer Organisation
The Consumer Voice in Europe

CONTENTS

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BEUC The European Consumer Organisation
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verbraucherzentrale Bundesverband

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ACKNOWLEDGEMENTS

BEUC, vzbv and the author of this study would like to thank the following individuals and organisations for their valuable contributions to our research:

- Altroconsumo, Italy
- Anna Fielder, Chair of Privacy International
- Consumers International, UK
- Cyprus Consumers' Association, Cyprus
- Dana Kissinger-Matray, ISO COPOLCO
- European Commission (DG Trade and DG Justice)
- Kristina Irion, Senior Researcher, Institute for Information Law (IViR) at the University of Amsterdam and Associate Professor at the School of Public Policy (SPP), Central European University, Budapest
- Leonardo Vallardes Pacheco de Oliveira, Lecturer, Anglia Ruskin University (Brazil)
- Lingling Wei, Lecturer in Business Law, Bournemouth University (China)
- Melinda St Louis, International Campaigns Director with Public Citizen's Global Trade Watch
- Professor Aya Ohsawa, HOSEI University, Tokyo (Japan)
- Professor Claudia Lima Marques, Universidad Federal do Rio Grande do Sul, Porto Alegre (Brazil)
- Professor John A. Rothchild, Wayne State University (USA)
- Union Luxembourgeoise des Consommateurs, Luxembourg
- Which?, UK
- Zveza Potrosnikov Slovenije (ZPS), Slovenia

1 EXECUTIVE SUMMARY

On a global scale, **e-commerce is growing at a phenomenal rate**. Global e-commerce sales are expected to reach $4 trillion in 2020, up from $1.6 trillion in 2016[1]. However, this study shows that the majority of EU digital shoppers prefer to remain within their 'comfort zone', purchasing from online retailers based in their own country. Although there is an increasing tendency to buy cross-border from online retailers within the EU, only a small proportion buy from outside the EU. So, why are EU consumers reluctant to enter the global online marketplace and what are the main challenges that they face?

The European Consumer Organisation (BEUC) and the **Federation of German Consumer Organisations (vzbv)** commissioned this study to gain a better understanding of the experience of EU consumers on a typical journey through the global online marketplace – from choosing and ordering goods, to having them delivered and trying to resolve disputes. This study explores the various tools that offer protection to EU consumers in global online markets, identifies gaps in protection and offers recommendations for improvement.

It is clear that **EU consumers need much higher levels of confidence and trust in global online markets** if they are to take full advantage of the benefits, and boost international trade. They need to be given clear information about their rights, and deserve equal rights and protections when shopping online as they do on the high street. This **equality of protection is a key principle** of international guidance published by the OECD and United Nations, but it is far from being a reality.

Adequate consumer protection is even more important in online markets as shoppers are in a weaker position than offline. They have no face-to-face contact with the trader, no opportunity to inspect items before purchase and, in almost all cases, are required to pay in advance of delivery. The consumer is forced to fulfil their contractual obligations at the start of the transaction, while placing their trust in the trader to fulfil theirs at the end.

Within the EU, consumers are protected by a strong regulatory framework, which is evolving rapidly to address this imbalance and to strengthen the consumer position. However, **consumer protection is dramatically reduced when purchasing from sellers outside the EU.**

1| eMarketer 'Worldwide Retail Ecommerce Sales: The eMarketer Forecast for 2016', Aug 2016

EU legislation should apply to all businesses 'targeting' EU consumers but, in practice, most businesses are unlikely to follow EU rules and, if things go wrong, **it is virtually impossible for a consumer to assert their rights with a trader outside the EU.** Outside the relative safety of the EU, consumers must rely on a complex, inconsistent and fragmented system of national legislation, which is often contradictory and difficult to access – providing no tangible means for individual consumers to seek redress. This system is underpinned by international treaties and free trade agreements, which focus on facilitating trade and often fail to address key issues of consumer protection.

Other consumer protection in the global online marketplace consists of 'soft' approaches, such as international guidance, industry codes, business initiatives and voluntary standards, which are not compulsory or enforceable. They may help to raise standards among organisations that are willing and able to improve, but are of little practical use to EU consumers if they experience problems when shopping online. These factors combined, create **a monumental challenge to achieving satisfactory consumer protection at a global level.**

Our research proves that EU consumers' lack of confidence in global online markets is not misplaced. EU consumers who want to shop online from non-EU traders face two main problems. First, **a lack of essential information at the pre-purchase stage**, in the form of business disclosure and independent advice. This makes it difficult for consumers to make informed purchasing decisions, to understand their rights, or know what to do in the event of a problem. Lack of information also places consumers at a high risk of 'accidentally' purchasing from an online retailer based outside the EU, thus sacrificing EU legal protections. Second, there is **a lack of tangible, accessible means of redress**, such as free independent dispute resolution at a global level, making it virtually impossible to resolve problems if things go wrong.

It is vital that political decision-makers recognise that **a lack of consumer protection is a key barrier to trade**, and ensure that global consumer protection is incorporated into legally binding instruments. Agencies involved in consumer protection must also evolve to keep up with global e-commerce by **improving international communication and collaboration at both ends of the consumer journey** to ensure that EU consumers can shop with confidence in the global marketplace

To read about the options available to consumers at each stage of the consumer journey, see **Sections 5-8**. A summary of conclusions can be found in **Section 9** and detailed recommendations in **Section 10**.

2 INTRODUCTION

2.1 Background

An increasing number of EU consumers are buying products and services from online retailers based outside the EU. While consumers shopping online within the EU benefit from increased consumer protection, those entering the global marketplace face a number of challenges and potential risks.

The European Consumer Organisation **(BEUC)** and the Federation of German Consumer Organisations **(vzbv)** commissioned this study in May 2017 to explore the experience of EU consumers in global online markets, and to assess the tools and instruments in place to protect them.

The findings will help **BEUC** and **vzbv** to inform and protect EU consumers, and to influence policy and international guidance that may affect EU consumers in the future.

2.2 Research aims and objectives

The main aim of the study was to report on the current reality of global e-commerce from a European consumer angle. The key objectives were to:

- describe the legal framework in place to protect EU consumers shopping online outside the EU, including an overview of existing binding EU consumer laws for third country traders and international conventions that directly affect consumers' rights in e-commerce
- present an overview of consumer trends, views and experiences, to form a complete picture of the current situation from the perspective of EU consumers
- formulate policy recommendations to improve the European consumer experience in e-commerce outside of the EU.

2.3 Report scope

This report focuses on the experience of EU consumers when buying products from online retailers based outside the EU. It considers the entire consumer journey, from choosing a product, paying for it and getting it delivered, through to complaints handling and dispute resolution.

The key findings centre on the experience of consumers buying from businesses (B2C), but also take into account the experience of consumers who buy from other consumers (C2C), for example via an online platform such as Amazon Marketplace or eBay.

This study focuses on **tangible goods**, as this is the best way to demonstrate the challenges faced at all stages of the consumer journey. However, it also recognises the importance of:

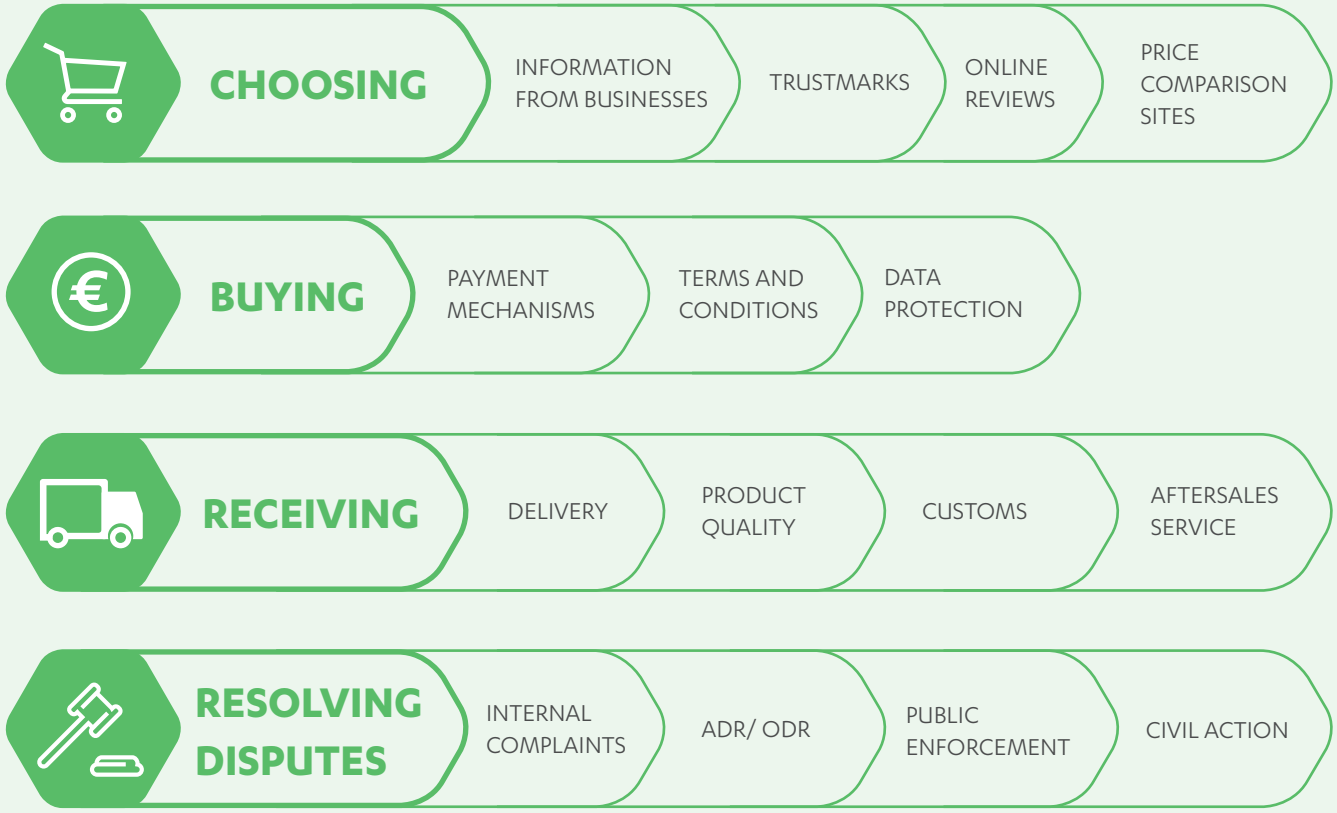
- **offline services** (those delivered in real life, such as travel services, hotel and event bookings)
- **online services** (those delivered online, such as cloud services, social media, communication, email and Skype)
- **digital content** (such as e-books, downloadable music, films, games and apps).

2.4 Report content and structure

Key findings are summarised in **Sections 3 to 8.**

Section 3 summarises the experience of consumers in the global online marketplace, highlighting current trends and behaviour.
Section 4 summarises existing consumer protection, including legislation, trade agreements, international guidelines, standards and industry codes.
Sections 5 to 8 follow the chronological journey of a typical EU consumer purchasing goods from an online retailer based outside the EU – from choosing a product, placing an order, receiving goods, through to resolving disputes. Each section describes the challenges faced and the options for redress.

Figure 1: Key issues at each stage of the consumer journey



Section 9 provides conclusions and **Section 10** details recommendations.

2.5 Research methodology

To fulfil BEUC and vzbv's objectives the following research was conducted.

2.5.1 Primary research

Primary research was carried out using both quantitative and qualitative techniques, including:

- in-depth interviews with experts in the field of e-commerce and consumer protection
- collating and analysing current and historical data relating to global e-commerce and complaint data from BEUC members
- an online survey of BEUC members.

2.5.2 Secondary research

Desk research using a wide range of sources was undertaken as follows.

Literature review:

- Study of existing market research
- Analysis of secondary research data
- Voluntary standards
- Industry codes
- Legal expert analysis:
- Existing legal framework
- Cross-border trade agreements
- Dispute resolution and enforcement

For more details about the research methodology, please see **Annex 1.**

3 CONSUMER TRENDS & EXPERIENCES

3.1 Overview

This study highlights a deficiency of empirical data concerning the experience of EU consumers in the global online marketplace. The absence of international dispute resolution schemes means there is a lack of consistent and comparable data about the nature and quantity of consumer complaints. Available data tends to focus on:

- the situation in specific EU countries (e.g. studies by national consumer organisations of consumers within their own countries)
- cross-border shopping within the EU-28 market (e.g. reports published by the European Commission)
- the experience of global consumers by country, without defining the European Union as a separate sub-group (e.g. IPC[2] , PWC[3]).

BEUC members

As part of this study, BEUC contacted its members to request research or complaints data relating to the experience of consumers in their own countries.

The majority (with the exception of Which? in the UK, VZBV in Germany and ZPS in Slovenia) did not have sufficient data about online shopping outside the EU. However, the data we did receive provides important insights that allow us to draw some useful conclusions.

The variety of definitions and approaches used can make comparisons across different reports and data-sets ineffective. In addition, much of the research is based on retrospective consumer accounts of events, which can result in underestimation and underreporting.

Despite these limitations, the conclusions of existing studies are strikingly similar. The qualitative evidence gathered from BEUC members (see **BEUC members**, right) also highlights similar experiences, needs, concerns and expectations shared by consumers across the EU. These are referenced in the relevant sections of the report.

3.2 Global e-commerce

Global retail e-commerce sales are expected to reach $4 trillion in 2020, up from $1.9 trillion in 2016.[4] The digital proportion of overall sales is expected to expand rapidly, as more people choose to shop online than in-store.

2| IPC 'Cross-border e-commerce shopper survey 2016', January 2017

3| PWC 'Total Retail: They say they want a revolution', 2016

4| eMarketer "Worldwide Retail Ecommerce Sales: The eMarketer Forecast for 2016", Aug 2016

Global research shows that the two main influencers for buying online are convenience and price[5]. The Internet makes is easier to research goods and services, compare prices and access reviews. If offers a wider choice of goods, and prices can be competitive as businesses have fewer overhead costs than bricks and mortar stores.

By region, Asia Pacific is by far the largest e-commerce market, with the highest turnover and the largest number of e-shoppers, but Europe has the third largest turnover, the second highest number of online shoppers and the second highest average spend per e-shopper[6].

A large proportion of global e-commerce takes place via intermediary sites. A 2016 survey by IPC found that three online intermediary platforms accounted for two thirds of respondents' most recent online cross-border purchases: Amazon (31%), eBay (23%) and Alibaba/AliExpress (11%).[7] The study does not explore the reasons behind this trend, but the popularity of intermediary sites could be due to: recognition of the brand; convenience of already having an account set up; and the fact that online platforms often have their own guarantees and systems of dispute resolution such as Amazon's A-Z Guarantee and eBay's Moneyback Guarantee. From a services perspective, the growth of the sharing economy has soared in recent years, with peer-to-peer services such as Uber, Airbnb and Couchsurfing, enabling increased C2C interaction between users and providers. PWC estimates that globally, the 'sharing economy' is worth $15 billion and could reach $335 billion by 2025.[8]

3.3 EU e-commerce trends

3.3.1 Overview

According to the E-Commerce Foundation, 'online retail in Europe is growing exponentially'. [9] The number of e-shoppers, and the amount they are spending, is increasing rapidly. It says that EU consumers spent €530 billion online and this is expected to increase to €602 billion in 2017. The proportion of EU consumers shopping online has almost doubled in a decade, increasing from roughly 30% to 55%.[10] But although cross-border e-commerce is on the rise, the majority of EU online shoppers still buy from sellers in their own country (see **Figure 2**).

This trend is mirrored at a national level. A recent survey of German consumers[11] found that 19% had ordered goods from within the EU during the past 12 months, compared with 13% who had ordered from outside the EU. Data from ZPS in Slovenia shows that cross-border purchases from outside the EU increased between 2014 and 2016.[12] However, these data give no indication of frequency so an EU consumer indicating that they have bought cross-border might be shopping three times a week or once a year.

A 2015 ANEC survey found that, while just over half of online shoppers in the EU had bought something from a retailer based outside the EU, purchases tended to be few and far between. Only 3.5% of EU consumers said that they bought outside the EU several times a month or more, while 31% made such purchases once a year or less.[13]

5| PWC 'Total Retail: They say they want a revolution', 2016

6| E-commerce Foundation, 'Global B2C E-commerce' 2016

7| IPC 'Cross-border e-commerce shopper survey 2016', January 2017

8| PWC 'Sharing or Paring: Growth of the sharing economy'

9| European E-Commerce Report, 2017

10| Consumer Conditions Scoreboard: Consumers at home in the Single Market, 2017

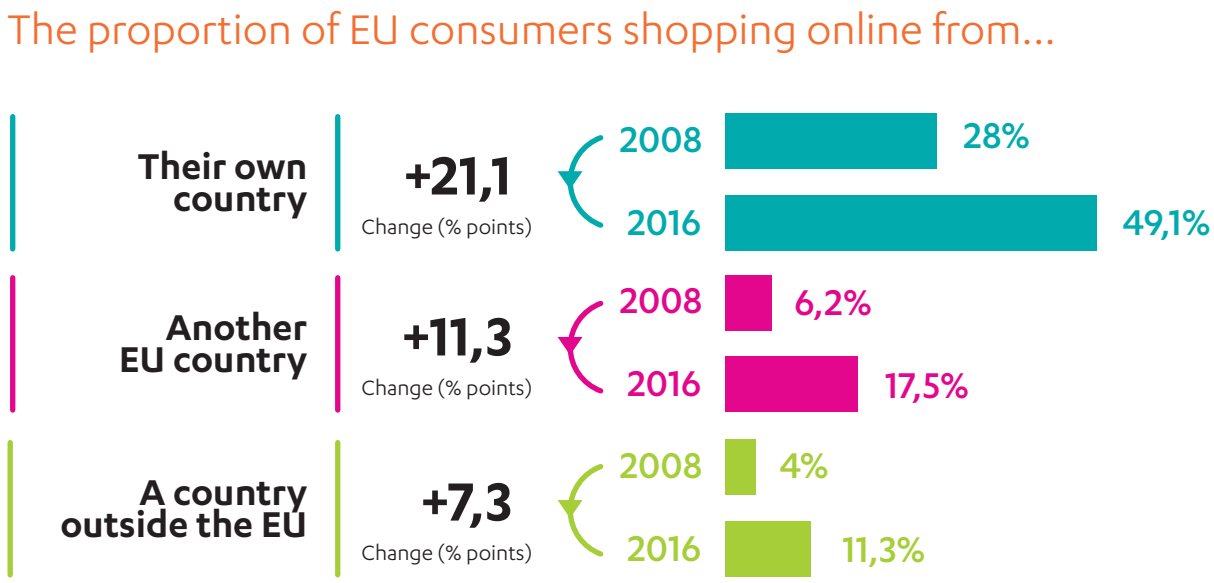
11| Federal Statistical Office, Wirtschaftsrechnungen, Private Haushalte in der Informationsgesellschaft, December 2016

12| http://pxweb.stat.si/pxweb/Database/Ekonomsko/23_29_informacijska_druzba/11_IKT_posamezniki/10_29745_e_nakupovanje/10_29745_e_nakupovanje.asp

13| ANEC, 'Cross-border Online shopping within the EU – learning from consumer experiences', December 2015

When European consumers do buy online from outside the EU, they are most likely to buy from sites based in China and the US.[14]

Figure 2



Source: Consumer Conditions Scoreboard 2017

3.3.2 EU consumer purchasing trends

An IPC study of global consumers in 2016[15] found that online purchases made cross-border tend to be low value, lightweight products, or services. A 2015 European Commission study[16] found that EU consumers purchasing from online retailers outside the EU most commonly bought the following goods:

1. Clothing, shoes and accessories
2. Computer games and software
3. Electronics and computer hardware

The same study confirms that cross-border purchases are often lower value. It found that EU consumers who had shopped online from their own country during the previous 12 months spent an average of €589. However, the average spend was €244 for those who had shopped cross-border within the EU and only €150 for those who had shopped cross-border outside the EU. It found that cross-border shopping outside the EU accounted for only 7% of the total amount spent online by EU consumers. Iceland had the highest proportion of cross-border spending outside EU (18%), followed by Cyprus (16%).[17]

3.4 Accidentally entering the global online marketplace

A key finding of this study is that it is surprisingly easy for an EU consumer to end up trading with an online retailer established outside of the borders of the EU, without making a conscious decision to do so. A survey carried out by Which? in 2017 found that 21% of consumers who had bought a product from an online retailer based outside the EU during the last year were unaware of this fact when they made their

14| IPC 'Cross-border e-commerce shopper survey 2016', January 2017

15| IPC 'Cross-border e-commerce shopper survey 2016', January 2017

16| European Commission, conducted by GfK Belgium, 'Identifying the main cross-border obstacles to the Digital Single Market and where they matter most', September 2015

17| European Commission, conducted by GfK Belgium, 'Identifying the main cross-border obstacles to the Digital Single Market and where they matter most', September 2015

purchase.[18] A review of qualitative data suggests that there are four main factors leading consumers to enter the global online marketplace 'by accident'. They are described below.

3.4.1 Website address confusion

A website's address (URL) can help consumers to identify the country in which a trader is located (for example, a site ending in .uk is likely to be established in the UK and a site ending in .de is likely to be established in Germany), although this is not always the case.

Many multi-national businesses legitimately have multiple websites that target consumers in different countries. This can lead to some consumer confusion (see **'Amazon case study'**, below). In addition, EU businesses can legitimately have a URL ending in .com. For example, the website address for Apple in the UK is Apple.com/uk. Typing apple.co.uk will automatically redirect UK consumers to the UK site, but not all sites redirect users.

Some unscrupulous traders and fraudsters deliberately use misleading website addresses. According to complaints to German Consumer Advice Centres, German consumers have experienced problems after buying from **fraudulent or 'cloned' websites**, which used a URL ending in .de, but were later discovered to be operating outside the EU. The consumers did not receive their goods and were unable to get their money back.

One of the main complaints about global e-commerce reported to ZPS in Slovenia is that the origin of traders can be misleading. A website written in the Slovenian language, for example, leads consumers to believe they are buying from a domestic online retailer, when in fact they could be buying from the USA or China.

UK consumers report similar problems, with one Which? member saying:

Case study: Amazon sites

Amazon, for example, has multiple sites that service different countries. A UK consumer searching for products online may end up on the Amazon.com site instead of the Amazon.co.uk site. Amazon normally detects the geographical location of the consumer and offers to continue browsing with the local site, but does not prevent the U.S. website being used outside the U.S.

To add to the confusion, as well as being able to buy directly from multiple Amazon sites, UK e-shoppers can also buy from the Amazon.co.uk marketplace, where sellers may be shipping from different parts of the world.

'I once bought a camera from a site with a UK web address. The camera eventually came from the USA, not without a lot of hassle. I am now very wary.'[19]

3.4.2 Failing to check trader location

Many accidental purchases could be due to consumers failing to check the identity and location of trader, and where goods are being shipped from, due to inexperience or lack of knowledge about the potential risks. Which? found that a quarter of its members did not check the location of the trader when

18| Which? UK survey of 1,609 members carried out in August 2017

19| Which? UK survey of 1,609 members carried out in August 2017

shopping online. One said: *'It was only when I was given a two-week delivery time that I realised it was coming from China'*. Another said: *'I had no idea the company was in China till I received the despatch notice'*.

3.4.3 Intermediary sites

Intermediary online platforms vary in their approach to displaying information about the location of sellers, and it is not always easy for potential buyers to find this information.

- **eBay.** The seller's location is usually displayed, although it may not always be prominent. Buyers can filter search results by location of trader.
- **Amazon.** It can be difficult to find out the geographical location of the seller and where items are being dispatched from, although many market place sellers will normally disclose where the goods are dispatched from under the delivery information. It is also hard to ascertain whether the item is being sold by Amazon directly, by a third-party seller but fulfilled by Amazon, or directly by a third-party seller. Unlike on eBay, it is not possible to filter results by location of seller.

3.5 Barriers to global e-commerce from the consumer viewpoint

Evidence suggests that a lack of confidence and trust in purchasing from online retailers outside the EU is preventing EU consumers from participating in global online markets in larger numbers. An ANEC survey carried out in 2015[20] demonstrates that levels of confidence decrease rapidly for purchases outside the EU. Whereas 60% of EU consumers said they felt very confident shopping from a website in their own country, this dropped significantly to 28.4% for a website elsewhere within the EU and to 14.7% for an Internet retailer based outside the EU. Almost one in three online shoppers (28.3%) said they did not trust online sellers in other countries at all.

Following a review of qualitative evidence from Which?[21] and **vzbv**[22], barriers to shopping outside the EU appear to fall into four main categories, which are detailed in the sections below.

3.5.1 Reduced consumer protection

Consumers admit that they lack knowledge about their rights in the global online marketplace, but realise that they have less protection outside the EU. One Which? member said he was put off by the *'lack of financial and legal protection'* outside the EU, while another said their key barrier was *'lower standards of consumer protection'*. Another respondent to the Which? survey said: *'I like to know that my purchases and payments are covered by UK or EU law and consumer protection.'*

3.5.2 Poor quality of goods

Which? members reported concerns about the quality of goods, which included items being substandard, unsafe, unsuitable or counterfeit. One respondent said that they wouldn't shop outside the EU as there was *'too much risk of counterfeit goods'*. Another claimed, *'I'd be concerned that I might not be buying the genuine article.'*

3.5.3 Concerns about delivery

Which? members also reported concerns about long delivery times, products not being delivered at all, wrong or damaged products being delivered and the high cost of shipping.

20| ANEC, 'Cross-border Online shopping within the EU – learning from consumer experiences' (December 2015)

21| Which? UK survey of 1,609 members carried out in August 2017

22| Consumer complaints compiled from regional Consumer Advice Centers in Germany and the Marketwatch project of vzbv.

There is also **uncertainty about customs and taxes**, which are not applicable to items being posted within the EU.

3.5.4 Dispute resolution

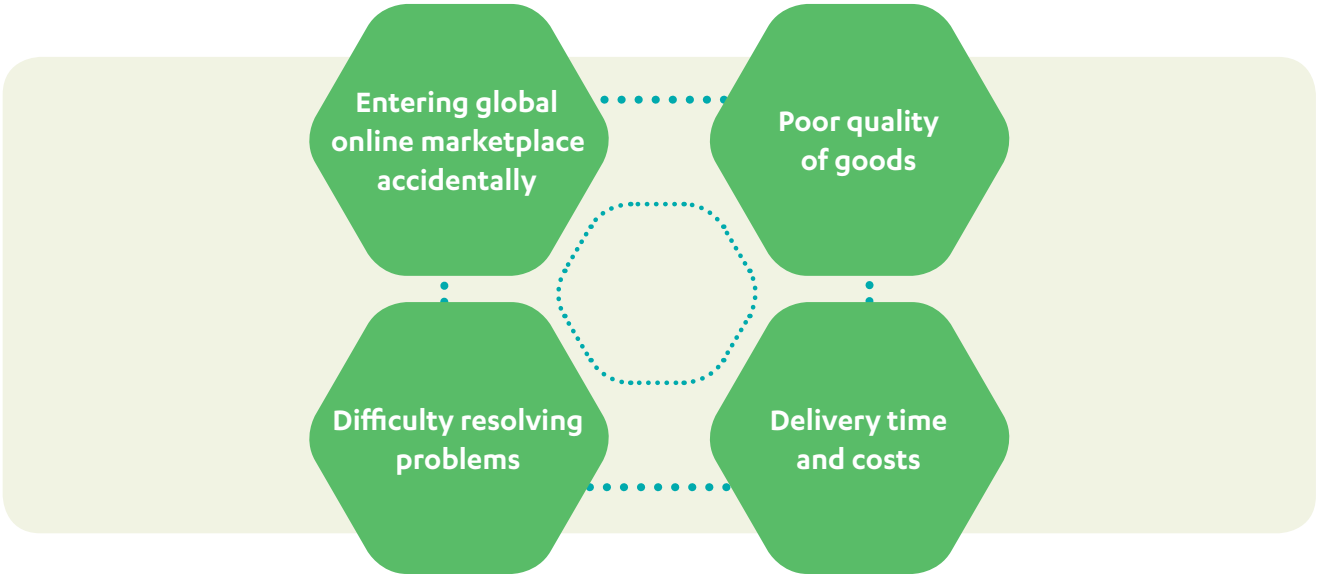
A key barrier found by the **vzbv** survey was a lack of knowledge about where to turn in case of problems. This concern was echoed by Which? members in the UK. One survey respondent claimed they would be unlikely to shop from an online retailer outside the EU due to *'uncertainty of how to resolve disputes'*. Another said they were *'not sure about my rights if something goes wrong, or even if I would have any rights'*. Another said: *'I would feel that it would be more unlikely for me to get satisfactory recompense should the article prove to be defective or not up to the standard I expected'*.

3.6 Problems experienced

There is a lack of data about the types of problems experienced by consumers in the global online marketplace due to the absence of complaints and dispute resolution schemes at an international level. A review of this data, plus studies from national consumer organisations, suggests that problems fall into four main categories (**Figure 3**), that show a strong correlation with perceived barriers detailed in **section 3.5** Further details about the types of problems experienced can be found in the relevant sections of the 'Consumer Journey' (**Sections 5-8**).

Figure 3:

Main problems experienced in the global online marketplace



3.6.1 Problems experienced by EU consumers

A report published by the European Commission in 2015[23] contains the most comprehensive data on this topic, although the small sample size should be taken into account. The report notes that cross-border purchases outside the EU, account for a disproportionately high amount of problems when compared with problems experienced when shopping online domestically or within the EU.

23| European Commission, conducted by GfK Belgium, 'Identifying the main cross-border obstacles to the Digital Single Market and where they matter most', September 2015

Figure 4:

Top 10 problems experienced by EU consumers buying from online retailers based outside the EU

Problem experienced when buying tangible goods and offline services cross border extra EU	(sample size 673)
Non-delivery	24.7%
Long delivery time	23.6%
Product was of lower quality than advertised	17.9%
Wrong product delivered	13.1%
Product delivered did not work	10.3%
Customer service was poor	8.8%
Delivery costs or final price was higher than displayed on website	7.7%
I could not return a product I didn't like and get reimbursed	6.4%
I could not access the foreign seller's website or only limited content was displayed to me	4.6%
The seller did not replace or repair a faulty product	4.5%

3.6.2 Problems experienced by UK consumers

At a national level, a survey carried out in the UK by Which? in August 2017[24] showed that 35% of people shopping online from a country outside the EU had experienced a problem. The most common problem was **shipping delays** (22%). 6% had problems with delivery, 4% had problems trying to get a refund and 4% had difficulty resolving disputes with the trader. 3% complained about additional and unexpected charges, and 7% had 'other' problems, which, based on comments, appear to be mostly about incompatible products.

3.6.3 UK view on shopping cross-border in future

The Which? survey found that only 11% of respondents said they would be 'very likely' to purchase products from an online retailer based outside the EU in future, compared with 42% who would be 'very likely' to purchase cross-border from an online retailer based within the EU.[25]

24| Which? UK survey of 1,609 members carried out in August 2017

25| Which? UK survey of 1,609 members carried out in August 2017

Three main reasons are given for this:

- Shopping outside the EU is unnecessary:
  Several Which? members stated that they did not need to shop outside the EU as everything they wanted or needed was available from their own country, or within the EU. One respondent said: *'There's nothing I would want that I could not get in the EU.'*

- Only if prepared to take a gamble:
  In this scenario, consumers understand the risks involved and will shop outside EU only for low-value products, so that they can afford to lose the money if things go wrong. One Which? member said: *'It's not often a transaction meets my two criteria: 1) unavailable in the EU for a reasonable price, and 2) cheap enough that I can afford to write-off the money.'*

- Only through a reputable intermediary side:
  Several Which? respondents claimed that, in future, they would purchase from online retailers outside the EU only through an online platform, such as Amazon or eBay. One said: *'I am mistrustful of them (traders outside the EU) honouring the purchase, although I would purchase via Amazon irrespective of the country.'* Another claimed: *'I would not do business with an overseas company or individual that is not tied into a reputable system such as Amazon or eBay.'*

4 EXISTING CONSUMER PROTECTION

4.1 Overview

This section summarises the key instruments in place, both legally binding and voluntary, that may offer protection to EU consumers in the global online marketplace. Detailed information about how these instruments may apply at different stages of the consumer journey is provided, where appropriate, in **Sections 5-8**.

4.2 Legislation

4.2.1 Level of consumer protection within the EU

The European Commission's objective of achieving a Digital Single Market has led to a major overhaul of consumer protection in recent years. EU consumers benefit from a harmonised legal system - via the use of regulations and directives - that offers a high level of protection. Regulations are directly applicable to all Member States, while directives (the most used instrument in consumer protection) only prescribe a result, leaving Member States to decide on the best way to achieve this in their national law. The result is that all traders established or trading in the EU must adhere to a minimum set of rules, and all EU consumers are afforded a solid foundation of consumer protection when buying products and services, regardless of which Member State they live in.

The Consumer Rights Directive is one of the most important consumer laws, particularly for online sales.

It clearly defines consumer rights in the area of online shopping. The Electronic Commerce Directive establishes legal rules that online retailers and service providers must comply with when dealing with consumers in the member countries of the EU.

4.2.2 Level of consumer protection outside the EU

4.2.2.1 Legislation

For EU consumers buying products or services from online retailers based outside the EU, there is no harmonised set of consumer protection requirements. Each country has its own set of rules. In general terms, EU law does not have reach beyond its borders, unless:

- the online retailer has agreed to apply EU law, or the law of one of the Member States, in its contract; or
- the trader 'targets' the consumer located in the EU and that 'a contract is concluded within the framework of its activities'.[26]

The United Nations Guidelines for Consumer Protection (UNGCP) state that: 'All enterprises should obey the relevant laws and regulations of the countries in which they do business'. However, this is only a principle so is not binding. It is also difficult to apply in the digital environment as a website can reach across borders, without necessarily targeting consumers in a particular state.[27]

In reality, businesses based outside the EU rarely agree to apply the consumer's local law because:

- it makes little sense for a business to subject itself to a legal regime, which is largely unknown, and by and large (in the case of the EU) more demanding than that of its own state
- it is difficult to expect online businesses (especially small and medium size) to know the legal requirements in all jurisdictions.

In most cases, the rights of EU shoppers (for example, the right to a cooling-off period or a refund) will be defined by any relevant laws in the country where the trader is based. The UNCTAD Cyberlaw Tracker,[28] which maps e-commerce legislation in 194 Member States worldwide, found that 77% of countries have e-transaction laws in place, 57% have privacy laws and 50% have consumer protection laws. However, the level of consumer protection offered by national legislation can differ dramatically. See **Annex 3** for an overview of consumer's e-commerce rights in five major global markets.

In disputes, consumers may be able to argue that their EU rights apply if the trader has **directly targeted** consumers in the EU. In these circumstances, the Rome and Brussels Regulations, and The Hague Convention, can help businesses and consumers to identify which rules apply to a particular transaction, but this system is complex and can create confusion for both businesses and consumers.

4.2.2.2 Contract law

Contract law may be applied when consumer protection legislation is absent, or insufficient, but the two may compete at times. Consumer law has often been developed to correct the worst effects of contract law, which governs the relationships of parties on more or less equal footing. The premise of consumer law is to protect the weaker party in the relationship and try to re-establish some balance.

Nevertheless, contracts are essentially driving B2C e-commerce. Every retail website operates on the basis that it offers products and services for sale, applying a set of terms and conditions (T&Cs) to govern the sale, which are drafted by the trader. These contracts are known as 'adhesion contracts' because, unlike traditional contracts, they are not negotiated between the parties. This has the advantage of cutting costs, as it would be too time-consuming and expensive to enter into negotiations with every customer. But it can also exacerbate the weaker position the consumer holds in the relationship, as the business possesses all of the information, for example about the product and shipping, and is able to set its own terms.

26| Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ 4.7.2008, L177/6, Recital 24.

27| Ibid 26

28| http://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Global-Legislation.aspx

Unfair terms legislation may control the types of T&Cs businesses can impose, but the tests for unfairness vary across the world. In other cases, consumers may be bound by terms that they have not knowingly agreed to, as evidenced by a Consumers International study[29] that shows online shoppers rarely read and understand T&Cs when entering into a contract. For further details about contracts, see **section 6.4**. In summary, contracts can offer some protection by providing documented terms against which a consumer can seek redress, but the principle of 'caveat emptor' (buyer beware) continues to apply.

Liability of intermediary sites

Following the sudden rise of online platforms, there has been global controversy about the liability of intermediaries. The EU is considering a Directive on intermediary platforms to regulate the way they operate, but there are no similar projects in other parts of the world. A noteworthy exception is China where legislation has been adopted to protect consumers using those platforms.

Amazon and eBay have their own T&Cs, and establish rules of behaviour for platform users (including sellers). As an example, if the T&Cs require a seller to not mislead consumers buying on the site, the intermediary platform could claim a breach of contract and bar access if a seller does mislead. This is a useful tool, as it compensates for lack of international harmonisation by creating one set of rules that applies to all buyers and sellers regardless of geographical location. It is, however, at the discretion of the platform to enforce those rules. Consumers tend to not be able to do so themselves because of rules on privity of contracts, which mean that only direct parties to a contract can impose obligations. These rules can vary around the world.

4.3 International guidelines

For the purposes of this report, international guidelines are defined as guidance for governments and businesses developed by organisations with a global membership, such as the OECD and the United Nations.

International guidelines can be a useful tool in ensuring some consistency in consumer protection, especially for shoppers purchasing from outside the EU. For businesses supplying goods and services to consumers, and those involved in the development of national policies, following such guidance can help to deliver consistent quality and effective levels of consumer protection.

International guidelines are increasingly addressing consumer issues in e-commerce markets. A key principle stated in both the OECD's Recommendation on Consumer Protection in E-commerce[30] and the UN's Consumer Protection Guidelines[31] is that 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.

However, these guidelines, including G20 declarations, remain within the realm of 'soft law'. They are not compulsory or legally binding, and cannot provide effective solutions for individual consumers experiencing problems. No consumer can avail themselves in a court of the goodwill shown in OECD discussions or UN Guidelines. They simply act as a blueprint and are an effective way to generate consensus.

29| http://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf
30| http://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf
31| http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf

4.3.1 United Nations

The revised United Nations Guidelines for Consumer Protection (UNGCP), adopted in 2015, set out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems. They include a specific section covering e-commerce that highlights some of the key considerations for ensuring that consumers are as protected in their online activities as in other types of commerce. Although not legally binding, they are widely accepted as the international benchmark for good practice in consumer protection.

The United Nations Conference on Trade and Development (UNCTAD) Intergovernmental Group of Experts (IGE) on Consumer Protection Law and Policy is responsible for ensuring that the guidance remains relevant and effective. The IGE met in July 2017, and participants recognised the widespread problems faced by consumers in global e-commerce markets, and the importance of taking swift action to address these before consumer confidence in cross-border transactions is undermined. As a result, UNCTAD created a new working group on e-commerce to identify problems that consumers face and to propose practical solutions.

4.3.2 OECD Recommendation on Consumer Protection in E-commerce

In 2016 the OECD revised its Recommendation on Consumer Protection in E-commerce. This sets out the core characteristics of a framework for effectively protecting and empowering consumers in the online marketplace. It covers information disclosure, misleading and unfair commercial practices, confirmation and payment, fraud and identity theft, and dispute resolution and redress. Updated provisions cover digital content, privacy and security, consumer reviews and ratings, non-monetary transactions, new payment mechanisms, and the use of mobile devices to conclude transactions. It is adhered to by 12 G20 economies.

4.3.3 The G20 consumer summit

In 2017, the G20 held its first consumer summit, hosted by the German G20 presidency in Berlin and organised with Consumers International and **vzbv**. It brought together key stakeholders from around the world to discuss the protection of consumers in the digital world.[32] The summit endorsed ten policy recommendations for the G20 states in order to strengthen and protect consumers in global digital markets, as follows:

1. Equal rights online and offline
2. Digital providers must be held to account
3. Access to affordable and good quality Internet for all
4. Information about digital products and services must be easy to access and understand
5. Clear and fair terms of use
6. Digital education and awareness must be stepped up
7. Protection against fraud and abuse
8. Control over personal data and privacy
9. Effective redress and claims for damages
10. Promotion of competitive markets

G20 leaders subsequently issued a declaration stating that *'trust in digital technologies requires effective consumer protection'* and including statements on privacy and data protection, security, access and inclusion and e-commerce.[33]

32| http://www.bmjv.de/G20/EN/ConsumerSummit/G20_node.html. For an account of the discussions on the day, see Christine Riefa, G20 Consumer Summit on Building a Digital World Consumers Can Trust (2017) 3 EuCML 124-128

33| See G20 Digital Economy Ministerial Conference declaration, 7 April 2017, especially para 26, http://www.bmwi.de/Redaktion/DE/Downloads/G/g20-digital-economy-ministerial-declaration-english-version.pdf?__blob=publicationFile&v=12

4.4 Free trade agreements

4.4.1 What are they?

Free trade agreements are concluded between different states and detail the terms of their relationship when it comes to trading products and services. The purpose is to reduce barriers and increase trade cross-border. They may be bilateral, involving two parties, or multilateral, involving more than two parties. At the moment, there are six agreements relevant to e-commerce, to which the EU is party. In addition, the EU is currently in negotiations with Japan to develop a free trade agreement.

Agreement	Members	Status
General Agreement on Tariffs and Trade (GATT)	All World Trade Organization (WTO) members	In force since 1949, updated 1994
General Agreement on Trade in Services (GATS)	All WTO members	In force since 1995
Information Technology Agreement (ITA)	82 participants, including EU	In force since 1996
Comprehensive and Economic Trade Agreement (CETA)	EU-Canada	Provisionally applied since September 2017
Trade in Services Agreement (TiSA)	50 participants including US and EU	In negotiation – on hold since new US administration
Transatlantic Trade and Investment Partnership (TTIP)	EU-US	In negotiation – on hold since new US administration

4.4.2 Level of protection offered to EU consumers in global e-commerce

Free trade agreements create tangible and enforceable rules for companies regarding market access and a lowering of trading barriers but offer very little, if any, tangible protection for consumers. Although consumers may benefit indirectly, for example by lower prices or access to a wider range of products and services, the agreements do not proscribe common or minimum protection rules.

According to an official at DG Justice and Consumers, most newer trade agreements contain a section on e-commerce and, within that, an article on consumer protection. This usually commits the parties to adopt and maintain legislation that protects consumers, and to cooperate with consumer protection authorities. However, parties are only encouraged to protect consumers if it does not conflict with the rest of the agreement – of which the main purpose is to facilitate trade.

According to a study by Rolland, of 129 trade agreements notified to WTO between 1995 and 2015, only 47 include some provisions on electronic commerce and only 19 have consumer protection clauses.[34] The proposed EU-Japan agreement includes a chapter on services and e-commerce, which contains the objective of creating an environment of trust and confidence in e-commerce.[35]

34| Sonia E. Rolland, Consumer Protection issues in cross-border e-commerce, ibid 373.

35| European Commission, 2017, text of the chapter on electronic commerce in principle, http://trade.ec.europa.eu/doclib/html/155727.htm

However, simply mentioning the terms 'consumer protection' and 'e-commerce' does not mean tangible benefits to consumers. Where targeted provisions do exist, these are usually limited to tackling safety, data protection, fraud, or unfair commercial practices. Although these are important topics, none of the agreements give specific rights to consumers at any stage of their e-commerce 'journey'. They do not give a right to information, a right to return, or a right to adequate dispute resolution. Some trade agreements include chapters on dispute resolution but those are for disputes between countries, so are not accessible to consumers.

In many trade agreements, consumer protection is listed as an area where parties are able to keep control of their own law-making powers, thus reinforcing the divide between consumers (being protected by local systems) and business interests being worthy of international consensus. There is some overlap between the interests of those two groups, in particular with regards to reliable payment systems, reduced transaction costs and market access, but there is also much dividing them. BEUC and its national member organisations have raised queries about the risk of trade agreements lowering standards of consumer protection. An official from DG Trade told us that this has been raised with EU legislators who will check with regulators at EU and Member State level.

There is some criticism from consumer and public interest groups about the negotiation process for trade agreements, as consumer organisations are not obligatory participants. There is a rule that negotiations must not take place in the presence of third parties, which includes consumer groups. Negotiators regularly communicate with stakeholders, according to an official from DG Trade, but the detailed content of agreements is generally disclosed at a very late stage, leaving it too late for substantial revisions or consumer input.

4.5 Standards

4.5.1 What are they?

Standards are published documents that offer detailed guidance to businesses about good practice. There are thousands of standards worldwide that address specific products and services. Standards are voluntary and can help organisations to fulfil their legal, ethical and social responsibilities.

Standards are written and developed by committees of relevant experts, with a full range of stakeholders, including consumer representatives, who must agree to the content (known as 'consensus decision-making'). Standards are published by standards bodies, either at a national, European (CEN/ CENELEC) or International (ISO/ IEC) level.

4.5.2 Level of protection offered to EU consumers in global e-commerce

International standards, published by ISO and IEC, can play a core role in consumer protection even though they are voluntary. The involvement of the consumer stakeholder ensures that consumer issues are taken into account, something which is lacking in the development of most industry codes and trade agreements.

Standards are recognised by businesses globally and have the potential to influence business behaviour for those who want to demonstrate that they take issues such as safety, quality and customer service seriously. In some cases, such as toys and domestic appliances in the EU, standards may be referenced in legislation as a way of meeting legal requirements. Standards that underpin legislation are therefore legally binding by association. They may also be used in a court of law as a benchmark of good practice.

However, standards take time to develop and, as such, it can be difficult to keep up with the rapid pace of change in online markets. ISO 10008 is the only standard that deals directly with global e-commerce, and it is due for revision in 2018. Other standards may apply to specific areas of global e-commerce, for example, there are new standards in development on blockchain technology and online reviews. Existing international standards also cover topics such as privacy, complaints-handling and dispute resolution. See **Annex 2** for further details of international standards that may be relevant to global e-commerce.

4.6 Industry codes

4.6.1 What are they?

Industry codes are developed by industry trade associations, or businesses themselves and define the terms of their interaction with consumers. This might be trade association codes of practice, trust marks or individual business T&Cs.

4.6.2 Level of protection offered to EU consumers in global e-commerce

Trade associations are for the most part set up to promote and protect their members' businesses and business interests. Many have codes of conduct for members, which may then use the association's logo or 'trust mark' to advertise their compliance with the code and win the trust of consumers. However, the level of protection they offer to consumers varies.

Some trade associations vet members to ensure they meet certain requirements. Others will let anyone join if they pay a fee. Some have stringent codes of conduct which offer good consumer protection, and independently audit members to ensure compliance. Others have codes that do not address consumer concerns, and do not audit compliance. In reality, it is difficult for consumers to know what level of protection a particular code offers.

Although there are hundreds of industry codes designed to boost consumer confidence and trust, very few operate at a global level. Most are national or regional in scope.

The Federation of International Trade Associations states its aim as 'strengthening the role of local, regional, national and global associations'. However, although it provides guidance to members, there is no focus on the consumer and no advice about codes of conduct for trade associations.

5 CHOOSING A PRODUCT

5.1 Overview

The first step of the consumer journey is choosing a product or service. The Internet makes this task much easier for consumers, as they can research products from multiple retailers, compare prices and read reviews, from the comfort of home. This can potentially give consumers more control over their transactions, but the quality and quantity of information can be confusing.

To ensure that consumers can make informed purchase decisions, it is important that they are given clear, accurate, relevant and timely information at this pre-transaction stage. This information may come

from third parties – such as online trust schemes, online reviews, social media or price comparison sites – and/or from the business themselves.

This section describes various sources of information and explains how a lack of information, or fraudulent practices, can lead to consumers buying from non-EU retailers by accident, and the implications this can have.

5.2 Information provided by businesses

5.2.1 Overview

In order to make informed purchase decisions consumers need clear, accessible pre-purchase information about: price (including shipping and customs duties); terms of delivery; product/ service description; returns and refund policies; and trader location and contact details. Online retailers in the EU are required by law to disclose such information but no such legal obligation exists at an international level. Good practice in this area is defined by international guidelines and voluntary standards, which are broadly aligned to EU legal requirements.

For example, the OECD Consumer Protection in E-Commerce Recommendations[36] contain a section on 'Online disclosures'. It states that businesses are expected to produce clear, accurate and conspicuous online disclosures that take into account languages as well as the limitations of devices and platforms where information is provided. Requirements include information about the business, the goods and services, and the transaction.

Similarly, the UN Guidelines for Consumer Protection[37] advises governments to review existing consumer protection policies to accommodate the special features of e-commerce and to ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace. The UN recommends considering relevant international guidelines (such as the OECD recommendations) and adapting them where necessary to social, economic and environmental circumstances.

ISO 10008 on e-commerce also gives detailed guidance on how organisations can support customers in the pre-transaction phase by creating, delivering and governing content that meets consumer needs for information about the organisation, its product and the e-commerce system.

Prior to the G20 Consumer Summit in 2017, Consumers International and **vzbv** published a report[38] detailing recommendations from the worldwide consumer movement to enhance digital trust. This included recommendations about disclosure, emphasizing that information should be of 'practical use to consumers', an aspect that does not always feature in legislations around the world. To that end, the information provided should enable an average consumer to quickly acknowledge and understand critical information. Critical information should be delivered using accessible language and presentation, be of minimal length, and give consumers the ability to compare price and functionality.

Details of disclosure required by national legislation varies from country to country (see **Annex 3** for examples). Some countries, such as **Brazil** and **China**, are prescriptive about the content while others, including **Switzerland**, leave the exact content to the traders. Specific disclosure is not required by legislation in the **USA** or **Japan**. Where requirements do exist, failure to meet these could be considered a breach of statutory duty, although it is highly unlikely that any individual consumer would actively pursue such a case.

36| http://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf

37| http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf

38| Consumers International/ VZBV, 'Building a Digital World Consumers Can Trust', March 2017

5.2.2 Price information

The OECD recommends that e-traders should give the total price, including all fixed charges and that any optional charges should be notified to the consumer before they confirm the transaction.

ISO 10008 states that online retailers should provide consumers with a breakdown of the various costs (including shipment, taxes etc) as well as the currency used to quote the price, and any promotional offers, including eligibility conditions.

5.2.3 Product description

In an online environment, consumers have limited opportunity to inspect products. It is therefore crucial, that they are given clear and detailed product information.

ISO 10008 states that online retailers should provide: 'a fair and accurate description of the products offered for sale, including their main features', as well as 'material information that the consumer would otherwise have available when buying the product in the traditional face-to-face B2C context (e.g. restrictions, health and safety warnings, or limitations or conditions of purchase, such as parental/guardian approval requirements and time restrictions).'

It says that consumers should also be given information about the availability of the product (e.g. the quantity in stock), guarantees and warranties, product certification, and product reviews.

5.2.4 Trader identification

Information about the origin of a merchant is also crucial. Firstly, this helps to prevent EU consumers from unwittingly entering into contracts with online retailers outside the EU (see **section 3.8**). Secondly, options for redress are limited if the trader cannot be identified (see **section 8**). In the EU, legislation requires online trader to tell consumers where it is based. However, outside the EU, different countries have different rules and many do not require this information to be disclosed.

ISO 10008 states that online retailers should provide the organisation's legal name, the name(s) under which it conducts business, its full address, telephone number and email address, as well as details of business registration, any professional memberships and accreditation.

5.3 Online trust marks

5.3.1 What are they?

A trust mark is a visible logo or 'stamp of approval' that may indicate that an e-trader conforms to certain standards of business practice. When ANEC surveyed EU consumers about e-commerce[39] , 76% of respondents claimed that they would be more likely to use a website with a trust mark label or logo.

In 2013, it was estimated that there were '54 different trust marks active that consumers may encounter when shopping online within Europe.'[40] One of the largest, Ecommerce Europe, provides 25,000 online shops across Europe with a European Trustmark label. Members agree to abide by a code of conduct and it has a dedicated complaints-handling service. However, there is a lack of similar schemes at an international level. Trustmark operators from around the world can join the World Trustmark Alliance, which provides guidelines for good online business behaviour, but does not require members to follow them.

39| ANEC 'Cross-border Online shopping within the EU – learning from consumer experiences', 2015

40| ECC-Net 'Can I Trust the Trust Mark?' 2013

5.3.2 How can they protect consumers?

Although these schemes aim to promote consumer confidence and trust, they do not offer effective protection for online shoppers. The sheer number of different schemes and marks can be confusing and, in the absence of any international guidelines, it is difficult to assess the level of protection or assurance they offer.

5.4 Online reviews

5.4.1 Growth of peer-to-peer reviews

Online reviews are widely used by consumers to research products and services, and can be extremely influential on purchasing decisions. An ANEC survey in 2015 found that 77% of consumers consult online reviews before making a purchase and half leave a negative review if they've had a poor experience. Online reviews can be published by a third party, such as Trip Advisor, or by a retailer, whether managed in-house or by a third party.

77% of EU online shoppers are influenced by online reviews.

76% are more likely to choose a website with a trust mark.

5.4.2 How can they protect consumers?

Online reviews can be beneficial to consumers only if they are managed fairly and represent the accurate views of real users. Following an investigation into online reviews, the International Consumer Protection and Enforcement Network (ICPEN) produced a set of guidelines in June 2016 for businesses involved in online reviews and endorsements. It aims to tackle poor business practices and reduce fake reviews. ISO 20488, due to be published at the end of 2017, defines good practice in the collection, moderation and display of online reviews.

5.5 Digital comparison tools

5.5.1 What are they?

Digital comparison tools allow consumers to compare products and services - by quality, price and various other characteristics - from a range of providers, in one place. These sites can help consumers to find the best products and services for their needs. Research from PWC shows that comparison sites are a key influence on global e-shoppers, with 35% consulting these sites before making a purchase.[41]

41| PwC 'Total Retail' 2017

5.5.2 How can they protect consumers?

The level of protection offered by these sites is in question. Digital comparison tools can help consumers to make informed choices only if information is collected, managed and displayed fairly. Several Which? reports in recent years have highlighted concerns, for example some comparison sites do not show the full range of providers, default to more expensive options, or choose how they display results. A recent investigation by the European Commission[42] found that the prices on two thirds of travel-related comparison sites were 'not reliable'.

The potential for consumer detriment is high, as many comparison sites do not simply display prices, but take the consumer directly through to booking, purchase or switching. Some comparison sites compare high-value and long-term financial services, such as mortgages and loans, which could potentially lead to high levels of consumer detriment if pre-purchase information does not give the full picture and is not clear, accurate and transparent.

5.6 Access

5.6.1 Inclusivity

One of the 'legitimate needs' stated in the UN Guidelines for Consumer Protection is the protection of vulnerable and disadvantaged consumers. This includes the provision of an inclusive service, that allows the largest number of consumers, with a wide range of needs and abilities, to access and use the service.

OECD says that governments and stakeholders should work together to achieve such protection and to determine how to address the special circumstances of e-commerce, including for children and vulnerable or disadvantaged consumers.

A proposal for a new ISO standard on inclusive service has just been accepted. This standard should address challenges faced by vulnerable consumers in digital markets. ANEC and Consumers International will liaise to provide consumer representation.

5.6.2 Geo-blocking

In simple terms, geo-blocking is a method used by some companies to prevent consumers in certain geographical areas from accessing a website. A study by the European Commission in 2016 found that geo-blocking is a widespread practice in the EU.[43] In a separate study by the European Commission,[44] EU consumers reported the following problems when shopping cross-border: denied access to a foreign website (4.6%)

- foreign sellers refused to sell to them (4%)
- charged a higher price based on country of residence (3.7%)
- automatically redirected to a website in my own country (3%).

The sample sizes for this study are small, but the results give a clear indication of the types of problems associated with geo-blocking. Such practices are potentially a key barrier to cross-border e-commerce.

Within the EU, there are proposals for a geo-blocking regulation to prohibit unjustified geo-blocking and associated practices. This will form part of a broader e-commerce regulatory package, and will supplement the existing Services Directive, which prevents businesses discriminating against customers based on nationality or place of residence. However, the proposed regulation will tackle geo-blocking only within the EU and there are no global initiatives to tackle this issue at an international level.

42| European Commission, 'Report on the monitoring exercise carried out in the online hotel booking sector by EU competition authorities in 2016',

43| http://ec.europa.eu/consumers/consumer_evidence/market_studies/geo-blocking/index_en.htm

44| European Commission, conducted by GfK Belgium, 'Identifying the main cross-border obstacles to the Digital Single Market and where they matter most', September 2015

Sources suggest that this issue affects consumers worldwide. Reports of detriment due to geo-blocking have also been identified in Australia, where the practice means consumers have to pay more for electronic goods.[45] The USA Chamber of Commerce opposes a ban on geo-blocking[46] , and online retailers based in the USA can choose where they will sell or provide services. In other countries, there are various national legislative responses to geo-blocking concerns.

6 BUYING A PRODUCT

6.1 Overview

After making the decision to buy a product online, the second step of the consumer journey is to place an order. At this stage, e-shoppers have to accept the terms of the contract, and enter their payment and delivery details. They have a right to expect that payment systems are secure, that their personal data is protected, and that T&Cs are fair and easy to understand.

At this stage, the trader should give customers the opportunity to agree product details and terms of delivery, as well as providing information about what to do if problems arise, and confirming orders promptly.

6.2 Data protection

6.2.1 Data protection and the law

The EU has the strongest and most comprehensive data protection laws in the world. These stipulate how businesses may collect, use and store customers' personal information such as name, address, date of birth or credit card number. The General Data Protection Regulation (GDPR), due to come into force in 2018, will strengthen existing protection. According to Consumers International,[47] the GDPR 'has the potential to set a new gold standard for data protection – considerably improving protections for consumers in the EU and internationally'. One major change is that it will require all organisations that process data from EU citizens – regardless of where they are based - to be compliant with the GDPR's requirements. So, GDPR rules will apply to online retailers outside the EU, if they specifically target EU citizens or monitor their behaviour online.

If those criteria are not met, national data protection laws in the trader's country will apply. Privacy International points out that: 'As our information travels around the world through borderless networks, our data may end up in countries that have different laws of varying strength or no law at all, meaning we'd have no remedies if our rights are abused.'[48]

45| https://www.choice.com.au/electronics-and-technology/Internet/Internet-privacy-and-safety/articles/bypass-geo-blocking

46| http://ec.europa.eu/information_society/newsroom/image/document/2016-5/us_chamber_of_commerce_13509.pdf

47| http://www.consumersinternational.org/news-resources/blog/posts/gdpr-will-it-be-the-global-standard-for-data-protection/

48| https://www.privacyinternational.org/node/44

6.2.2 International guidelines on data protection

Privacy and data protection is mentioned in some international guidelines. For example, the UN Guidelines for Consumer Protection state that the protection of consumer privacy should be taken into account in all business-to-consumer transactions. The OECD recommendations recognise that consumer data is at the core of many e-commerce services and contains principles for addressing privacy and security risks.

ISO publishes some international standards on privacy and data protection but, as previously stated, these are voluntary. ISO 10008 clearly addresses privacy issues in e-commerce, stating that any personal data collected by organisations should be kept confidential and use of that information should be limited to those purposes for which the consumer has given explicit consent. ISO 10008 also stipulates that organisations should protect consumer data by applying safeguards to prevent unauthorised access.

6.3 Online payments

The remote nature of e-commerce transactions opens up a host of new opportunities for criminals. Financial Fraud Action UK estimates that 50% of all card fraud is carried out via e-commerce transactions.[49] A survey by PWC found that e-shoppers around the world are worried about the security of online payments, which could limit their online shopping activity. 63% of shoppers said they only use credible websites, 59% buy only from brands they trust and 55% use only those payment providers they trust.[50]

Online transactions take place at a distance so payment options are limited, in most cases, to credit and debit cards or online payment schemes, such as PayPal, ApplePay or Alipay. When IPC asked e-shoppers from around the world to name their preferred payment option for online purchases, PayPal (or an equivalent) was the most commonly mentioned (41%), followed by credit card (33%) and debit card or bank transfer (18%).[51]

The OECD Recommendations for Consumer Protection in E-commerce has a chapter about payment issues, which is reminiscent of the EU Payment Services Directive. It says that businesses should provide consumers with payment systems that are easy to use, with security levels that are commensurate with risks. They also call for collaborative work to develop minimum levels of consumer protection in this area (including limitation of liability for unauthorised use, chargeback mechanisms, escrow services) and greater harmonisation of payment protection rules.

6.3.1 PayPal

PayPal is the largest online payment system in the world. In 2017, it had 210 million customer accounts and 17 million merchant accounts.[52] According to Statista, 22% of PayPal payments in 2016 were for cross-border transactions.[53] PayPal can increase the level of protection for consumers as they are not required to share their card or bank details directly with the trader. It can also provide additional protection to customers who experience problems with a trader via its internal procedure called PayPal Buyer Protection. For more details see **section 8** on resolving disputes.

49| Financial Fraud Action UK 'Fraud: the facts' 2017

50| PwC 'Total Retail' 2017

51| IPC 'Cross-border e-commerce shopper survey 2016', January 2017

52| http://files.shareholder.com/downloads/AMDA-4BS3R8/5029982220x0x950860/3C6C19E9-6BF5-468F-9BA6-BEB7F1B9A5BF/PYPL_News_2017_7_26_General_Releases.pdf

53| Statista, 'PayPal: cross-border total-payment volume share 2012-2016'

6.3.2 Credit and debit cards

Under EU law, consumers who have purchased goods and services online (regardless of where the trader is based) may be able to use chargeback mechanisms to recover payments, in cases where goods are not delivered or not in conformity with the contract.[54] Purchases by debit cards are not covered by EU law but may be covered by national law. For more details about chargeback mechanisms see **section 8.3.2**.

6.4 Consumer contracts

6.4.1 Terms and conditions (T&Cs)

When buying goods and services online from traders based outside the EU, a consumer's legal protection relies mainly on the T&Cs provided by the seller. Online T&Cs can be onerously complicated and long, creating confusion and deterring consumers from reading them. The Swedish Consumers' Organisation highlights that, when printed out, Airbnb's T&Cs are 39 metres long. Consumers International estimates that it would take the average person 76 working days to read all the T&Cs that they encounter online in one year. It claims that: *'it is now well understood that hardly anyone reads the small print before they click agree'*.[55]

A 2016 study by the European Commission found that fewer than one in ten online shoppers, when given a choice, read the T&Cs. It says that: *'T&Cs are often long and written in complex legal jargon. In some cases, they are as long as Shakespeare's Hamlet and Macbeth. Moreover, if they want to complete the purchase, consumers have no other choice than accepting T&Cs.*[56] *However, blindly accepting T&Cs may be costly, because consumers may end up with a contract they would not have signed if they had been aware of the content.'*

In summary, it is unrealistic to expect consumers to have the time to read the T&Cs of every online retailer they do business with, let alone understand them. However, this means that they often enter contracts without being fully aware of the conditions they have agreed to be legally bound by. For online purchases within the EU, contracts must be written in plain and understandable language and cannot contain unfair contract terms. But there are huge variations globally. See **Annex 3** for a comparison of national legislation in our five case study countries.

6.4.2 Unfair terms in contracts

In the EU, the Directive on unfair terms in consumer contracts aims to prevent significant imbalances in the rights and obligations of consumers on the one hand and sellers and suppliers on the other hand. Terms that are found unfair under the Directive are not binding. The Directive also requires contract terms to be drafted in plain language and states that ambiguities will be interpreted in favour of consumers. EU countries must ensure effective means under national law to enforce these rights.

At an international level, there is no harmonised legislation, and different countries have their own rules. In the **USA**, by and large, arbitration and jurisdiction clauses that restrict access to justice (for example, by barring access to court or specifying which court can deal with disputes) are commonly accepted as valid (albeit in a few exceptional cases)[57] whereas, in Europe, a judge can rule to remove these unfair terms from the contract.[58]

54| ECC-Net 'Chargeback in the EU/ EEA

55| Consumer International, 'Building a digital world consumers can trust' March 2017

56| http://ec.europa.eu/consumers/consumer_evidence/behavioural_research/docs/termsconditions_factsheet_web_en.pdf

57| The standard applied in the USA is that of 'unconscionability' which is a much higher standard to satisfy than showing a significant imbalance in EU law.

58| See for example, Océano Grupo Editorial SA v Roció Murciano Quintero (C-240/98) of 27 June 2000; Mostaza Claro v Centro Movil Milenium SL (Case C168/05) [2006] All ER (D) 322; Case C-473/00 Cofidis [2002] ECR-10875.

International guidelines address the issue of contract terms. For example, the OECD recommendations state that: *'Businesses should not use unfair contract terms'*, and the UNGCP states that: *'Member States should establish consumer protection policies that encourage clear, concise and easy to understand contract terms that are not unfair'*.

A 2015 study into the online auction industry[59] showed that a large amount of cross-fertilisation existed between the T&Cs of many sites, possibly due to small operators 'copying' others without seeking legal advice. This can lead to greater levels of consumer detriment, if everyone is copying a poorly drafted set of terms.

6.4.3 Order confirmation

Under EU law, traders must send written confirmation of the purchase. The OECD recommendations require that:

- the point at which a consumer becomes contractually bound and payment is due is clear and unambiguous;
- businesses should provide an opportunity to review and correct errors and should not process a transaction unless the consumer has provided express, informed consent to it;
- consumers need to be able to retain a complete, accurate and durable record in a format compatible with platform used.

These recommendations are in line with EU law, mostly contained in the Electronic Commerce Directive and the Consumer Rights Directive. There do not appear to be any federal rules in the **US**, **Switzerland** or **China** concerning confirmation of orders. By contrast, detailed legislation exists in **Brazil** and **Japan**. In **Japan**, the law[60] states that, if there is an error in the acceptance of an online contract, the law is in favour of the consumer. [61] Even if the consumer makes an important mistake on the main characteristics of the goods or services offered, the contract can be annulled. The onus is on businesses to prove any exemptions.

6.4.4 Cooling-off period

The UNCTAD Manual on Consumer Protection notes that e-commerce puts new pressures on consumers, including the speed of transactions and dynamic pricing. For example, where product pricing changes during the course of the transaction, or the consumer is informed that this is the last product at this price. Such pressures increase the importance of a cooling-off period.

In the EU, consumers are entitled to a 14-day cooling-off period for online purchases, during which they can cancel for any reason. Globally, consumers must rely on the law of the country in which the trader is based. National legislation varies across the five countries reviewed for this study. **Switzerland** and the **USA** do not offer a right to withdraw from a contract. However, there are some narrow exceptions in **USA** law[62] and many businesses exceed legal requirements to offer a right to return goods. In **Japan** consumers have a period of up to eight days, from receipt of goods, to return goods, but this right may be withdrawn by the trader if they specify in their T&Cs. In **China**, a right to withdraw also exists but lasts only seven days. Similarly, in **Brazil**, consumers have a 'right to regret' and there is a requirement to communicate this right to consumers.

59| Christine Riefa, Consumer Protection and Online Auction Platforms: towards a safer legal framework (Ashgate 2015) 141.

60| Act on Special Provisions to the Civil Code Concerning Electronic Consumer Contracts and Electronic Acceptance Notice

61| http://www.japaneselawtranslation.go.jp/law/detail/?id=116&vm=04&re=01

62| Omri Ben Sahar, Eric A. Posner, Right to withdraw in contract law, The Journal of Legal Studies, Vol. 40, No. 1 (January 2011), pp. 115-148, available online: http://home.uchicago.edu/omri/pdf/articles/Right_To_Withdraw.pdf

7 RECEIVING A PRODUCT

7.1 Overview

The third step of the consumer journey is the receipt of the product. Consumers have a right to expect that goods are delivered safely (packaged properly and not damaged) and in a timely manner. They should also expect to be kept informed about when the product will be delivered. In the EU, the trader is responsible for any damage to the goods from the time of dispatch until the consumer receives them. However, for purchases outside the EU, liability depends on jurisdiction and national legal requirements. This can get complicated as multiple organisations can be included in this process, leading to a 'transfer of risks'. For example, a French consumer may order an electrical item online from a retailer based in China, the goods may be dispatched from the warehouse in China via courier to the airport, flown to the UK, and then delivered to the consumer by the French postal service. In some cases, the retailer may be expected to maintain liability throughout the process, seeking compensation from third parties if something goes wrong. In other cases, the third party may be held liable.

7.2 Shipping and delivery

7.2.1 Consumer experiences

An IPC study shows that EU consumers expect to wait longer for deliveries coming from outside the EU than for those coming from another Member State. [63] However, a European Commission survey of EU consumers purchasing from online retailers outside the EU found that the most common problems were **long delivery times** (reported by 23.6% of consumers) and **non-delivery** of the product (experienced by 24.7%)[64].

In a Which? survey, delayed delivery was the most common problem experienced by those who had purchased from an online retailer outside the EU. One respondent said: *'I have several times had things that came from China. The first time I was unaware and dismayed by the delay in the item arriving. Now I will only order from China if I am not in any hurry and the price difference makes it worth waiting!'* [65]

Several respondents to the Which? survey also complained about non-delivery, with one saying: *'My purchase was a 12v LED light, and it was stated (by Amazon) it would be shipped from Hong Kong with a long delivery forecast. The product did not arrive on the due date and there was no delivery update. I would not have placed the order if it was high-value and if it did not have the Amazon safeguards.'*

7.2.2 Consumer protection rules

In the EU, the law provides a maximum 30 days for delivery and includes a duty to inform if a product cannot be delivered on time or has to be substituted. If goods are not received within 30 days, or within the mutually agreed period, the consumer must remind the trader, giving them an additional, reasonable time limit to deliver. If the trader still does not deliver within the extended deadline, the consumer can terminate the contract and get a refund.

63| IPC 'Cross-border e-commerce shopper survey 2016', January 2017

64| European Commission, conducted by GfK Belgium, 'Identifying the main cross-border obstacles to the Digital Single Market and where they matter most', September 2015

65| Which? UK survey of 1,609 members carried out in August 2017

In the global online marketplace, international guidelines are not prescriptive about delivery times and it was difficult to locate rules on such issues in the countries studied. One notable exception was **Switzerland**. When the trader does not provide the goods or services, there is no specific consumer law remedy available. Consumers have to rely on the code des obligations, under which the consumer needs to contact the trader (orally or in writing) providing a reasonable time scale for the trader to execute its obligations (for example, delivery). If this is not done, the consumer then has a right to cancel the contract. They must inform the trader immediately.

China is one of the largest players in the global e-commerce marketplace. However, in **China**, there is no legal obligation to deliver within a particular time frame, nor any obligation on the trader to inform consumers about delays or to replace with an equivalent product. There are no equivalent rules in **Switzerland**, **Brazil**, **Japan** or the **USA**. In the **USA**, it is likely such an issue would get resolved via chargebacks rather than through any other legal mechanism.

Delivery of services

With services, there are usually no delivery charges, shipping costs or customs duties to pay. However, the delivery of services can be complex as parameters are more difficult to define. When buying services from online retailers within the EU consumers have a right for the service to be delivered with reasonable care and skill, within a reasonable time and in accordance with the information given to them about the service beforehand.

However, what is 'reasonable' can be tricky to define. In some cases, payment for offline services (those delivered in 'real life'), such as a hotel stay, might be due after the service has been delivered, putting the consumer in a stronger position. However, with online services or digital content, as with products, payment is usually required upfront.

7.3 Customs

7.3.1 What is customs duty?

The EU Customs Union controls imports to and exports from the EU. It has completely removed all controls between its members, so that goods can move freely between EU Member States. However, any goods purchased outside the EU will pass through EU Customs and may be eligible for customs duty – a tariff or tax imposed on goods when transported across international borders. The purpose of customs duty is to protect each country's economy, residents, jobs and environment by controlling the flow of goods into and out of the country.

Customs authorities in the destination country determine whether any duties and taxes are applicable when the shipment arrives. The rates a consumer has to pay vary depending on the type and value of goods, and where the seller is based. Tariffs are based on a detailed international classification of goods.

eBay's Global Shipping Programme

can help to make things easier for buyers and sellers. It automatically calculates international shipping costs for prospective buyers, including postage and customs duties, and displays them on the seller's page.

Buyers then pay up front for the shipping meaning fewer surprises at delivery. It covers the majority of EU countries, and global markets such as the USA, Canada, Australia, and Japan, with the notable exception of China.

This is a significant omission for EU consumers as China was highlighted, earlier in this report, as the most common country for EU consumers to buy from when making online purchases outside the EU.

7.3.2 Consumer experiences

When a consumer purchases goods from outside the EU, they effectively become an importer who is liable for customs duty and VAT payments. In many cases, these need to be paid before items can be collected. However, Which? research suggests that consumers are not well informed on this point.[66]

Consumers may be completely unaware that customs duties apply to the product they have ordered, or uncertain of the total amount due. This can create confusion, unexpected costs and delays. 3% of respondents in the Which? survey had been caught out by unexpected custom charges, and several reported that their items had been held at customs until they had paid the relevant charges. One respondent described *'unexpected delays and demands for customs duty and VAT.'* Another said: *'Customs payment was more than I expected. Not the fault of the retailer, but it took me by surprise.'* Some claimed that the retailer had not warned them of the issue. *'I had to pay import tax of £30 on an item I bought from the USA. This was not mentioned in the advertisement.'* Another said: *'I had to pay customs duty on my last purchase and it ended up costing as much as the item - so not the bargain I thought.'*

This lack of knowledge about additional charges implies that online retailers are not making these obligations clear to their customers.

7.3.3 Business obligations

The responsibility for clear pricing, with a total price that includes all taxes and duties, should lie with the trader (as it does within the EU). However, at a global level it is difficult to find information about taxes in legislation. In some countries, advice on this topic comes from consumer associations or enforcers. For example, in **Switzerland** the website of the Federal Consumer Bureau provides some guidance that products bought from outside the country are subject to VAT, custom duties and other taxes.[67]

By and large, international trade agreements, and the GATT in particular[68] , lift much of the duties that need to be paid on IT products, but not retail e-commerce in general. The G20 is also discussing issues of taxation of e-commerce. The Declaration of the Heads of States explained that the G20 countries are working to enhance tax certainty and working with the OECD on the tax challenges raised by digitalisation of the economy. There is a body of academic work,[69] as well as international initiatives,[70] on this issue but this does not help consumers when they shop abroad.

66| Which? UK survey of 1,609 members carried out in August 2017

67| Commande de produits a l'etranger: quel sont les coûts?, https://www.konsum.admin.ch/bfk/fr/home/dienstleistungen/auskunftsstelle/faq.html

68| Declaration on Global e-commerce from 1998.

69| See for example, Basu, International taxation of e-commerce: persistent problems and possible developments, http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2008_1/basu/basu.pdf

70| See for example, OECD's work in the area, http://www.oecd.org/tax/treaties/ecommercereportsandtechnicalpapers.htm; also see for the situation in Europe, http://europa.eu/rapid/press-release_IP-16-4010_en.htm

7.4 Quality of products

7.4.1 Consumer experience

In the European Commission's survey of EU consumers who had shopped online from outside the EU,[71] 17.9% reported that the product they had bought was lower quality than advertised and 10.3% said that the product they received didn't work.

Complaints by Which? members about products purchased from online retailers outside the EU included poor quality or faulty products and those that were incompatible with UK systems. For example, one bought an electrical appliance which came without a UK plug or English instructions. Another bought a tablet which had a foreign version of the operating system, which did not update in the UK. Some Which? members suspected that items they had bought from outside the EU were counterfeit. One Which? member said: *'I had a very poor experience with a Chinese company that was selling fake Birkenstock shoes via a cloned version of the real Birkenstock website a few years ago and am very wary of non-EU sellers as a result'.*

Case study: incompatible software

A Which? member from the UK bought a Samsung Galaxy Tab S2 from an online platform based in the UK, which he assumed to be from a UK based seller. However, when it arrived (after some 2-3 weeks) he realised that it was from Hong Kong. While being almost the latest Samsung tablet, it did not have the most recent software updates, which he assumed was because of the location. He is now unable to update his software and complains: *'while all other S2s bought in UK are now on Android 7, I'm still on 5!'.*

7.4.2 Product safety

The European Commission collaborates with many countries and organisations worldwide to tackle the issue of product safety, to protect EU consumers from unsafe products purchased from retailers outside the EU. It participates in the OECD's Working Party on Consumer Product Safety, to share information and discuss topics such as global recalls. The OECD Recommendation on Consumer Protection in E-commerce recognises that, in a number of countries, a range of unsafe products, which have been prohibited from sale or recalled from the offline retail market, are available in e-commerce. A new provision has been added to ensure that unsafe products are not offered to consumers online, and that businesses cooperate with the relevant authorities to address the problem.

Some problems however may remain for goods that are imported via purchases on online platforms where consumers buy directly from other consumers or from small businesses. Those may not be necessarily captured by the provisions described above.

The EU also has agreements with other countries to address the issue of product safety. For example, the EU is involved in regular product safety summits with the US and China and there is a Memorandum of Understanding between the EU and China, which establishes a framework for better communication and collaboration between EU and Chinese authorities to raise levels of general product safety.[72]

71| European Commission, conducted by GfK Belgium, 'Identifying the main cross-border obstacles to the Digital Single Market and where they matter most', September 2015

72| http://ec.europa.eu/consumers/consumers_safety/international_cooperation/bilateral_cooperation/index_en.htm

The OECD recognises the importance of product safety to 'stimulate and help reduce impediments to e-commerce within and across borders'.[73] The UN's Manual on Consumer Protection contains a chapter on product safety and liability.

7.4.3 Counterfeit goods

According to a 2017 report published by Europol and EUIPO,[74] counterfeit goods are increasingly distributed via online marketplaces, with over two thirds of counterfeits coming into the EU from China. The report states that the majority of counterfeit goods bought on the Internet evade detection at EU borders as they are usually sent directly to consumers in small parcels via postal or courier services.

Consumers can be drawn to fake websites due to low prices, with many sites of such high quality that they rival those of the rights holder. But Europol explains that counterfeiters often evade capture as they are able to function across multiple jurisdictions, and take down and set up new websites overnight without losing their customer base.

As well as preventing the sale of fake clothes and other designer goods, customs officers routinely detain counterfeit products that could be dangerous, such as medicines, toys, electrical appliances, fake sunglasses that can damage eyesight and car parts, including brakes.

Enforcement against counterfeit products mostly takes place at a national level. Some attempts to ensure platform intermediaries would police the sale of such goods have largely failed in the **USA**. However, intermediary platforms are not subject to the same protection everywhere. In **China**, for example, the law states that business operators must compensate consumers who are victims of fraud. Punitive damages can be imposed and consumers can recover more than they have actually lost.

There is no harmonised way of dealing with counterfeit products in the international trade agreements that have been studied. Some agreements have started to recognise this may be a problem on a global scale, but tend to focus on the protection of intellectual property, thus the protection of corporate interests, rather than consumer protection. For example, in CETA, the only reference to misleading consumers is included in the provisions concerning product names that sound similar to reputable brands.

7.5 After-sales service

7.5.1 Overview

Under EU legislation, if goods are faulty, or do not look or work as advertised, a trader must offer consumers a repair, replacement, price reduction or refund. How non-EU traders deal with these types of problems is likely to be specified by national legislation protecting consumers or general contract law.

7.5.2 Wrong product

A study of the national legislation in our five case study countries found no specific provisions about delivery of the wrong product. Therefore, if buying from outside the EU, this would likely be a contract law issue. If the product sent was not as described it may also be dealt with as an unfair commercial practice.

73| https://www.oecd.org/sti/ieconomy/Digital-Economy-Ministerial-Declaration-2016.pdf

74| EUROPOL and EUIPO, 'Situation Report on Counterfeiting and Piracy in the EU', 2017

7.5.3 Faulty products

By and large, when physical products are defective, consumers do have rights. However, these rights vary – see **Annex 3** for details of legislative requirements concerning defective products in our five case study countries.

In some countries, the law requires businesses to pay for returning faulty goods, but in many cases, consumers are liable for these costs, which can be significant. For digital goods, there is little evidence of protection outside of the EU.

Case study: cost of returning faulty product

One Which? member complained about the costs involved in returning a faulty water pump. The seller agreed to replace it free under warranty but the customer had to bear the cost of returning the item, which included import duties, tax and a Royal Mail admin fee for collecting the taxes. That added up to *'a lot of money for a 'free' replacement'*.

7.5.4 Difficulties experienced

A large number of Which? members reported problems when trying to communicate with the seller to resolve problems after purchase. Some claimed that they were **unable to find contact details for the seller**, or did not receive any replies to messages sent. Others said it was too difficult communicating with the seller: *'I've twice bought items... from companies based in China. One had to be returned as a duplicate (which was very expensive) and the other was faulty. Items took a long time to arrive and although both companies agreed refunds, email communication was difficult as they didn't always understand what I was saying and repeatedly asked what the problem was.'*

Others felt that it was **too much effort to return faulty or unwanted items.** One respondent said: *'The product did not meet expectations, but I could not be bothered to return it because the item was of low cost.'* Another said: *'They sent the wrong size, but the postage too expensive to return.'*

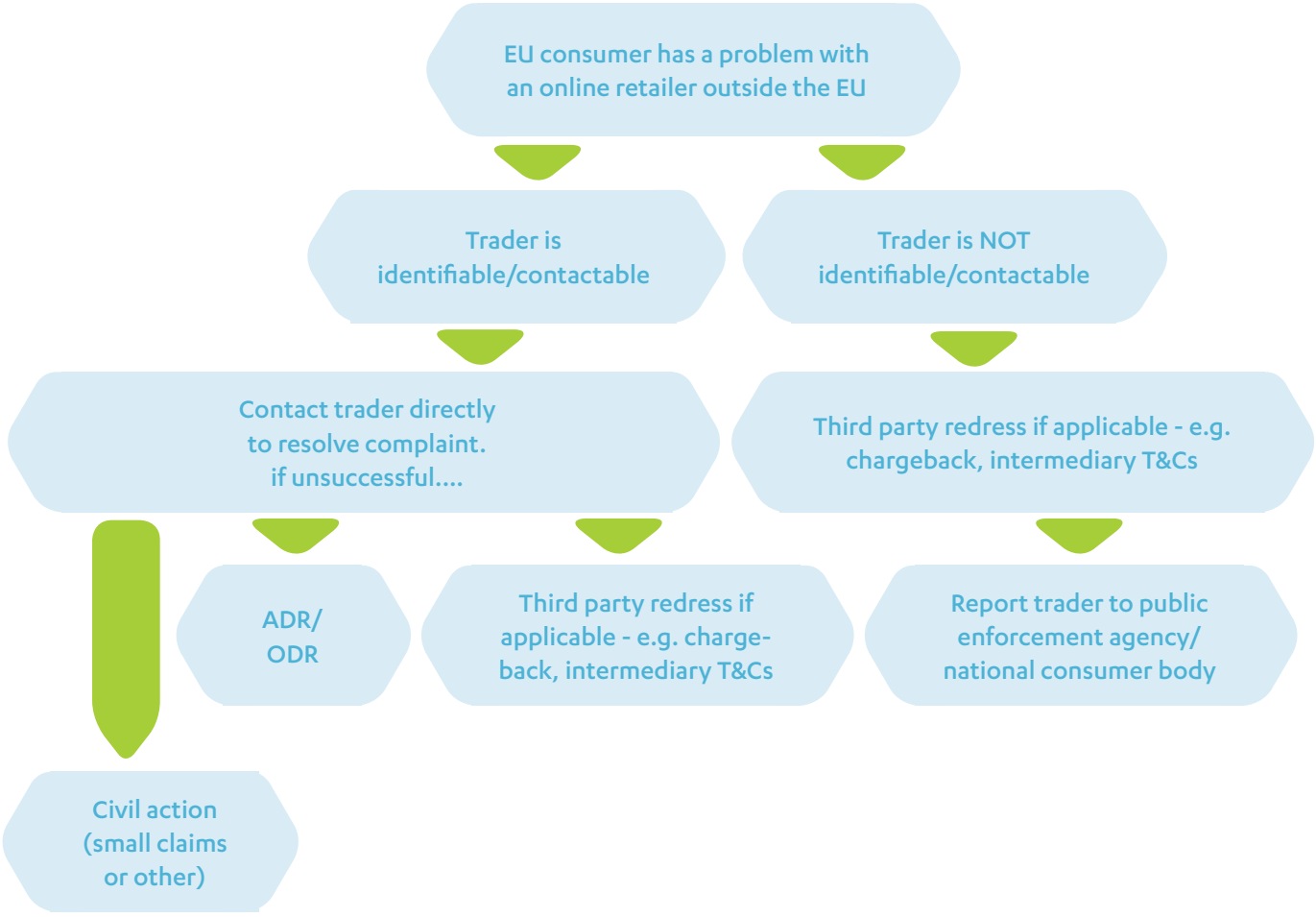
8 COMPLAINTS & DISPUTES

8.1 Overview

Everyone makes mistakes. But is it how online retailers deal with these mistakes that counts. If a consumer has a problem with an online retailer based outside the EU – for example, products are damaged, faulty, delivery is delayed – they have a variety of options available to them. A consumer's course of action will depend on whether the trader can be identified and contacted, from information given on the website or during the transaction process. An unscrupulous trader may not provide contact details or respond to communications. If the site was fraudulent, or the trader is operating unlawfully, it may be impossible to contact them. Figure 5 charts a typical consumer journey through redress mechanisms

Figure 5:

Possible redress mechanisms for EU consumers



8.2 Complaints

8.2.1 Consumer experience

According to a European Commission study[75] of EU consumers who experienced problems when shopping from both EU and non-EU websites, 82% made a complaint, while 16% did not. Those who complained were most likely to do so to the seller of the product (57%), while only 7% took the matter to an out-of-court dispute resolution body and only 3% went to court. For those who didn't complain reasons included 'the sums involved were too small', 'did not expect to receive a satisfactory solution', 'did not know where to complain' and 'unsure of consumer rights'. Unfortunately, there are no figures specifically for EU consumers shopping outside the EU to show whether consumers are less likely to complain in these cases, or experience more difficulties.

75| European Commission, conducted by GfK Belgium, 'Identifying the main cross-border obstacles to the Digital Single Market and where they matter most', September 2015

However, our research suggests that geographical distance, language barriers and the absence of harmonised rules to fall back on, are likely to complicate matters and make it harder to complain and get disputes resolved satisfactorily.

8.2.2 Internal complaints handling

If the trader is identifiable, and contactable, consumers should seek to resolve the complaint with them first. A reputable trader will want to resolve customer disputes. An unscrupulous trader, is less likely to want to do so, and may not even engage with the consumer, and it is in these cases that a more robust system is needed. This is by far the most cost-effective solution for both parties, but not all problems can be solved this way.

All online retailers should have a defined process for dealing with complaints. The OECD recommendations encourage 'the development by businesses of internal complaints-handling mechanisms, which enable consumers to informally resolve their complaints directly with businesses, at the earliest possible stage, without charge'.

ISO 10002 deals with complaints handling, although there is a newer complaints-handling standard (BS 8543) in the UK, which may form a basis for any revisions of ISO 10002.

8.2.3 Cross-border complaints

Within the EU, consumers can go to the European Consumer Centre (ECC) in their own country for free information, advice and assistance on cross-border shopping within the EU. The European Consumer Centres Network (ECC-Net) has offices in all 28 Member States of the EU, plus Norway and Iceland. When a consumer reports a problem, the ECC liaises with the ECC in the trader's country to find a satisfactory resolution.

As more consumers buy from Internet retailers based in other European countries, the number of people reporting problems to ECCs has increased. According to ECC-Net's 2015 anniversary report[76], ECCs have dealt with nearly 50,000 cases involving e-commerce during the last ten years. By 2014, more than two thirds of the complaints they handled involved e-commerce transactions. As there are no reciprocal partners outside the EU, consumers cannot use ECCs to help resolve disputes with non-EU traders. However, ECCs will give advice in these cases.

8.2.4 ICPEN

The International Consumer Protection and Enforcement Network (ICPEN) has developed www.econsumer.gov, a global online complaint mechanism that allows individuals to file complaints related to cross-border transactions and to learn how to resolve disputes with foreign traders. However, the scheme is limited to reporting fraud, and individual consumer complaints are unlikely to be investigated. The details are most likely to be used by overseas enforcement bodies in their investigations and to help identify trends in online shopping complaints.

8.2.5 Complaints to national bodies

If a consumer experiences a problem with an online trader outside the EU, and they know the country in which the trader is based, they can lodge a complaint with the relevant complaints organisation in the trader's country. For example, the Better Business Bureau in the **USA**, the Swiss Federal Consumer Affairs Bureau in **Switzerland** or the **China** State Administration for Industry and Commerce in China. However, some organisations simply record complaints or give advice, rather than take action to resolve the dispute. Consumers are likely to find this process more difficult, if not impossible, in countries that do not share their language.

76| ECC-Net, '10 years serving Europe's consumers – Anniversary report 2005-2015'

8.3 Payment services providers

8.3.1 Overview

If the trader is not identifiable, or is unwilling to resolve the problem, the consumer can seek reimbursement from their payment service provider. This may be their credit or debit card provider, or an online service such as PayPal.

8.3.2 Chargeback mechanisms

European Directives on payment services[77] and credit agreements[78] allow consumers who have paid by credit card to request a chargeback in the following cases:

- the transaction is not authorized by the consumer/cardholder;
- the trader does not respect the consumers' rights;
- in the case of bankruptcy.[79]

The chargeback mechanism offers important protection for consumers in the global online marketplace, as it covers them for all purchases on applicable cards, regardless of where the trader is based. The relationship is between the customer and their card provider, and the card provider and the trader so it can even be used in cases where the trader is not contactable or identifiable. Purchases where debit cards are used are not covered by EU law but might be covered by national law, or T&Cs of a specific card company.

The EU Payment Services Directive provides rules to protect EU consumers making online purchases. Notably, those include a right to information about charges and a limitation on the consumer's liability for unauthorised payments to €50.[80] Consumers in other parts of the world have varying levels of protection. For example, in **the USA**, much of the protection takes effect via chargeback mechanisms that have been in place for many years. By contrast, **Chinese banks** do not offer chargeback on card transactions. This explains the quick adoption of Alipay (third party 'escrow' service, such as PayPal) as the main means to pay for purchases on Alibaba's websites.

There are limitations to chargeback mechanisms, as most apply only to transactions which have been conducted directly between a consumer and a trader. They don't apply to indirect relationships, or payments made via an agency. For example, if a consumer uses their credit card to make a PayPal payment to a retailer, it counts as an agency, and they will not have protection under European law.

8.3.3 PayPal

Consumers who pay online via PayPal might be able to get their money back via the PayPal Buyer Protection Scheme[81] in cases where they have not received the item, or where goods do not match the seller's description. If attempts to resolve the problem with the seller are unsuccessful, consumers can open a Dispute with PayPal's online resolution centre within 180 days of the payment. If the consumer and Payment Recipient are still unable to come to an agreement, either party can escalate the Dispute to a Claim within 20 days of opening the Dispute. PayPal may require the buyer to post an item back to the Payment Recipient, to PayPal or to a third party, but it is not clear who is responsible for these costs.

77| Directive 2007/64/EC Payment Services Directive (PSD)

78| Directive 2008/48/EC Consumer Credit Agreements (CCD)

79| ECC-Net, 'Chargeback in the EU/EEA'

80| For more on this, see Christine Riefa, Directive 2009/110/EC on the prudential taking up, pursuit and prudential supervision of the business of electronic money institutions and Directive 2015/2366/EU on the control of electronic payments in the EU, in Arno R. Lodder, Andrew D. Murray, EU Regulation of E-Commerce, a commentary (Edward Elgar 2017) 146-176

81| https://www.paypal.com/uk/webapps/mpp/paypal-safety-and-security

8.3.4 Online platforms

Consumers who buy from an international e-trader via an online marketplace can seek redress via the intermediary, for example via Amazon's A-Z Guarantee, which covers purchases from third-party sellers, and eBay's Moneyback Guarantee. Amazon's scheme offers a high level of consumer protection. Amazon has a policy of expecting consumers to be 100% satisfied, whether their complaint is genuine or not.[82]

At first glance this seems good for consumers, but it should not be used as a template for dispute resolution. This is because small providers can feel aggrieved that they have to shoulder the burden for complaints that are not genuine. It can also lead to reduced choice, as only traders with a certain financial might can enter the market place. In any event, it can potentially push social issues elsewhere and cause problems for consumers later down the line.

8.4 Alternative dispute resolution

8.4.1 Overview

Alternative dispute resolution (ADR), such as mediation, arbitration or an ombudsman, provides a way of resolving disputes by negotiation, without having to take the matter to court. If consumers are unable to resolve disputes directly with a trader, they might consider this as an option. It can be a cheaper and quicker way to reach resolution but it requires both parties to be willing participants in the process. This makes it a useful tool for reaching a successful outcome if the seller is willing to resolve problems.

Some retailers and businesses may provide access to independent ADR schemes as part of their internal dispute resolution process. Consumers may also access ADR schemes via an industry regulator, trade association scheme (if the trader they have dealt with is a member) or an independent third party. However, ADR is limited in its ability to protect EU consumers who experience problems within the global online marketplace as:

- there is a lack of free independent schemes to deal with international disputes;
- decisions are not legally binding;
- the process relies on the willingness of both parties to participate for a successful outcome.

8.4.2 Within the EU

In June 2013, the EC published Directives on Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). Member States had until July 2015 to implement the legislation in their own countries. All businesses established in the EU that sell goods or services to consumers online must now comply with the ADR/ODR legislation, which should help consumers and traders to solve their disputes without going to court, in a quick, low-cost and simple way. However, consumer awareness and trust of the schemes is still low.

8.4.3 Outside the EU

At a global level, there are no free and independent systems of dispute resolution for B2C disputes. The International Centre for Dispute Resolution claims on its website to be 'the world's leading provider of international dispute resolution services' dealing with cross-border transactions. However, it appears to charge for the help that it provides and to target business cases rather than individual consumers. Some regional systems are in place (e.g. between Mercosur countries and within the European Union) but these are not useful to EU consumers shopping outside the EU. The United Nations Commission on International Trade Law (UNCITRAL) Working Group III is currently working on a non-binding document to describe the principles of ODR for e-commerce disputes.

82| Jane K. Winn, The secession of the successful: the rise of Amazon as Private Global Consumer Protection Regulator 58 (2016) Ariz. L. Rev. 193-21

8.5 Private legal action

8.5.1 Overview

Consumers may prefer to take private legal action through the courts – either via small claims (if claim is under a specified amount) or the court appropriate for their type of dispute and amount at stake. To take legal action, consumers rely on their national consumer legislation and/or contract law as the basis for their claims. Taking as our default that consumers buying cross-border are wary of the risks we will focus on small claims procedures.

8.5.2 Small claims

Each country normally has a small claims court or equivalent forum to resolve small value disputes. The European Small Claims procedure is designed to simplify and speed up cross-border claims of up to €5000. Although most commonly used to settle cross-border disputes within the EU, it can be used in cases where at least one of the parties is domiciled or habitually resident in a Member State so it may be used by EU consumers who experience problems with online retailers based outside the EU. The grounds on which an EU court can be given the power to make legal decisions for this purpose are set out in the relevant EU instrument, for example the Brussels I Regulation.

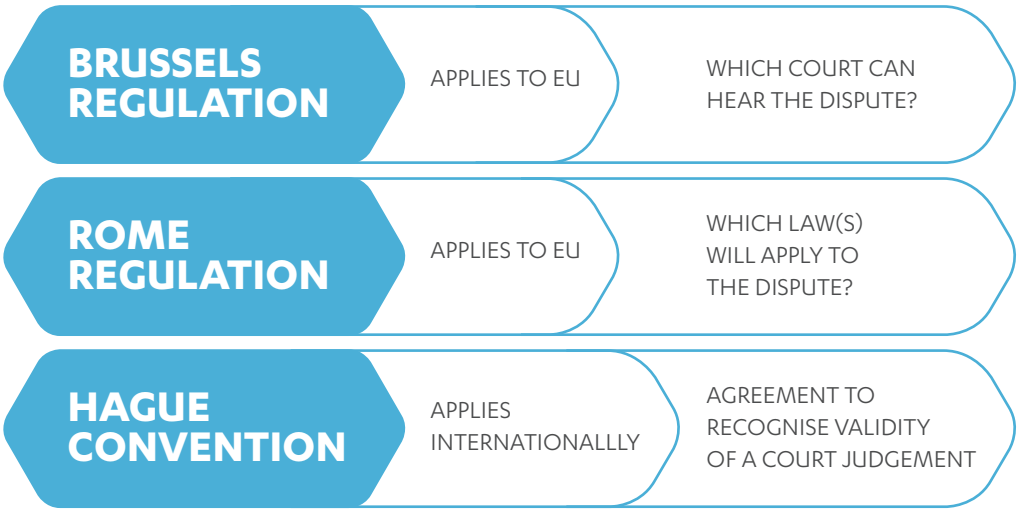
In the case of private civil action, if the trader and consumer are located in different jurisdictions, there are essentially three main questions to answer before determining how to proceed:

- What law is applicable to the contract?
- What judge will be competent to hear the dispute?
- Which court can enforce the decision?

In theory, providing the consumer is an EU citizen or lives in the EU, these questions can be answered by the application of three instruments: the Rome Regulation (EU Legislation on choice of law rules), the Brussels Regulation (EU instrument on jurisdiction) and The Hague Convention (International treaty on the recognition of judgements). See **Figure 6.**

Figure 6:

Three instruments of cross-border civil action



However, these questions are extremely complex, due to intricate rules of jurisdiction, conflicts of law and the fact that international private law is anchored in the physical location of the trader or business (known as 'domicile'), a factor which can be difficult to assess in dematerialised environments such as the Internet.

According to Hörnle, civil action is completely unsatisfactory for resolving cross-border consumer disputes because: *'cross-border litigation and enforcement is so expensive and time-consuming that access to redress by conventional court-based means is effectively barred for all but the largest claims. For small claims, the costs and delay of cross-border litigation are frequently entirely disproportionate to the remedy potentially obtainable'*.[83]

Studies show that consumers are unlikely to take sellers to court even in their own countries. So, doing this when the retailer is based outside the EU, may speak a different language and follow different laws, makes it highly unlikely that this is a realistic or achievable means of redress for the average consumer.

8.5.2.1 Which court can hear the dispute?

The Brussels Regulation (recast)[84] provides rules to Member States to determine which courts have jurisdiction over cross-border contracts involving consumers. While the general rule in the Regulation is that the defendant should be sued in the courts of the Member State where it is domiciled, Article 18 gives consumers (who meet certain criteria) the choice to sue either in their own country of domicile, or in the country where the defendant is domiciled. (For a person, this is their permanent home or the place that they live in. For a business, it is the country in which their headquarters is based.)

The Brussels Regulation (recast) offers protection to consumers who have concluded contracts with **a trader who is not domiciled in the EU**, in the following ways:

- Consumers can sue in their home state regardless of the domicile of the other party (Article 18(1)).
- Consumers can sue in their home state when a trader pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, **directs such activities** to that Member State or to several States including that Member State, and the contract falls within the scope of such activities (Article 17(1c)).
- When the trader has a branch, agency or other establishment in one of the Member States, that party shall be deemed to be domiciled in that State (Article 17(2)).

Every country normally has rules on how to determine the connecting factors that will lead to identifying if a business is indeed established on their soil (Article 62). This is something that would be decided in court on a case-by-case basis.

Directing activities

Case law of the European Court of Justice explains that the following list (not exhaustive) may constitute evidence that a trader, or intermediary, is 'directing' its activity to the Member State of the consumer's domicile:

- the international nature of the activity;
- use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established;
- mention of telephone numbers with an international code;
- use of a top-level domain name other than that of the Member State in which the trader is established; and
- mention of an international clientele composed of customers domiciled in various Member States.

It is for the national courts to ascertain whether such evidence exists.

83| Julia Hörnle, The jurisdictional challenge of the Internet, in Lilian Edwards and Charlotte Wealde (eds.), Law and the Internet (Third edition, Hart 2009) 121

84| Regulation 1215/2012 of 12 December 2012 on jurisdiction and the recognition and the enforcement of judgments in civil and commercial matters,

8.5.2.2 What law is applicable to the contract?

In the EU, the Rome Regulation[85] can be applied to determine which law is applicable to the contract. However, it is not a model used everywhere.[86] Under this regulation, the parties are free to choose the law that applies to their contract. However, specific rules are in place to protect consumers in two specific situations.

- If the contract did not specify what law would apply, the contract 'shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:
  - pursues his commercial or professional activities in the country where the consumer has his habitual residence; or
  - by any means, directs such activities to that country or to several countries including that country, and the contract falls within the scope of such activities.'
- If the parties have elected a law applicable to the contract, the chosen law should not deprive the consumer of the protection afforded to him by the law of his country of residence. So, while the contract may point to another law, it would have to be at least as protective as the one of the consumer's residence. As a result, consumers cannot be deprived of the law of their country of origin or subjected to a less favourable regime.

8.5.2.3 Which court can enforce the decision?

Providing that the Brussels and Rome Regulations have pointed to the right forum and applicable law, the court dealing with the dispute (most probably in the consumer's own country) will render a judgement. This judgement is, in principle, enforceable against the business. Under the Brussels Regulation (recast), providing the business is located, or at least has some form of presence, in the EU (statutory seat, central administration or principal place of business (Article 63), the judgement rendered in one Member State will be recognised in other Member States without any special procedure being required (Article 36). The recast has therefore removed the need to obtain exequatur within the EU. However, it should be noted, that there are grounds under which automatic recognition may be refused (Article 45).

At this stage, it is doubtful whether the changes adopted by the Brussels Regulation (recast), which enable consumers to sue regardless of domicile, will translate into improved recognition of judgements outside the borders of the EU. In disputes between a consumer and a trader established outside the EU, it is clear that the court of the consumer's Member State has competence. However, it is not clear what will happen to a judgement rendered in favour of the consumer and against a trader established outside the EU.

The situation is more complicated when the transaction does not come within the scope of the Brussels Regulation, or the contract's subject matter does not fall within the specific rules concerning consumer contracts (transport for example). In this case, to obtain enforcement of the decision in the trader's country of origin, consumers could use The Hague Convention on the recognition and enforcement of foreign judgement in civil and commercial matters.[87] However, this instrument does not provide much assistance for consumers who may have successfully sued in their country of domicile. This is primarily because the consumer may find that the local rules are not sympathetic to consumers, or do not provide similar protection, meaning that the local judge may not be able to order compliance.

The Hague Convention does not offer any specific mechanisms of recognition for consumer disputes, despite previous attempts to adopt rules for consumers entering into electronic contracts which could have helped streamline the process of recognition of judgements.

85| Regulation (EC) No 593/2008 on the law applicable to contractual obligations

86| See Gisela Rühl, Consumer Protection in Choice of Law (2011) 44 Cornell International Law Journal, Electronic copy available at: http://ssrn.com/abstract=1816641.

87| https://www.hcch.net/en/instruments/conventions/full-text/?cid=78

Such improvements were *'dropped amidst difficulties, leaving [the Convention] without any preferential treatment for consumers'*.[88] As a result, under the Convention, a judgement delivered in Sweden against an American company would be enforceable in the USA only if it is formally recognised by an American judge – something that would be extremely difficult and costly for an individual consumer to achieve.

8.5.3 Collective redress

Collective redress allows a group of people to join together to bring a single claim against the same defendant for the same reasons. Collective civil action (or 'class actions') may be brought by groups of consumers, or by a representative organisation, acting on their behalf. Although it must be noted that the standing of a consumer organisation in a foreign jurisdiction is far from guaranteed.

In 2013, a European Commission Recommendation invited Member States to introduce collective redress mechanisms, based on a set of common principles. The Recommendation establishes a framework to ensure a horizontal approach to collective litigation, but is not legally binding.[89] The Recommendation is silent on terms of jurisdiction, and the Brussels Regulation (see **8.5.2.1**) does not contain specific rules regarding collective redress. This is a very technical area and national judges would need to decide where a dispute was heard on a case by case basis. Another obstacle to cross-border class actions is that the country where the consumer would sue, or where rights are infringed, would need to allow collective redress, and not all countries do, even within the EU.

8.6 Public enforcement

Even the best consumer protection legislation cannot protect consumers unless there is effective market surveillance to ensure that businesses are applying the rules, and authorities have appropriate tools to force compliance.

Effective systems of cross-border market surveillance and enforcement at an international level are crucial to protecting consumers in global online markets, but public enforcement is notoriously difficult. This is because public authorities dealing with consumer protection often have to compete for limited resources.

The rise of e-commerce complicates the matter of enforcement further, because many companies (including those directly targeting EU consumers) are based abroad and are therefore difficult to identify and locate. This acts as a further deterrent for authorities to intervene, leaving consumers without any real protection.[90] Rogue traders can re-open in a different part of the world as quickly as it takes to shut down their website. Another complication for cross-border enforcement is that enforcement authorities in different states or regions are mandated to enforce only within the confines of their own laws. As a result, if a rogue trader establishes itself in a jurisdiction where misleading consumers is not yet controlled, it is unlikely that the local enforcer can provide assistance.

Within the European Economic Area (EEA), individual countries have their own enforcement authority responsible for ensuring consumers' rights, both at national and cross-border levels. This network of authorities is coordinated by the **Consumer Protection Cooperation Network (CPC)**, which has overall responsibility for enforcing EU consumer protection laws in EU and EEA countries. Participating countries are obliged to provide mutual assistance. This harmonised approach to enforcement enhances consumer protection as authorities in different Member States can share information, request enforcement measures and alert each other to malpractices.

88| Lorna Gillies, Electronic Commerce and International Private Law, A Study of Electronic Consumer Contracts (Ashgate 2008) 209-223.

89| http://europa.eu/rapid/press-release_IP-13-524_en.htm

90| Christine Riefa, Consumer Protection and Online Auction Platforms, towards a safer legal framework (Routledge/ Ashgate 2015) 169

In a digital marketplace, international cooperation between enforcement authorities is key and, in this respect, ICPEN[91], which has member enforcement authorities in more than 60 countries worldwide, is a noteworthy initiative. Although the CPC cooperates with ICPEN, they do not have a formal agreement, which reduces their ability to protect EU consumers in the global marketplace. At the G20 Consumer Summit 2017, representatives from enforcement agencies worldwide recognised and highlighted the lack of international collaboration as a pressing issue.[92]

9 CONCLUSION

Lack of trust and confidence is a key barrier to EU consumers participating in global e-commerce markets. For those who do buy from online retailers outside the EU, purchases are infrequent, and tend to be low value items that shoppers are prepared to 'write off' if things go wrong. Our research proves that consumers are right to have concerns, as the likelihood of things going wrong in the global online marketplace is much higher than if shopping within the EU, and the likelihood of getting a satisfactory outcome in a dispute is low.

There are **insufficient safeguards at all stages of the consumer journey**, which can expose consumers to potential detriment, including financial loss, stress, inconvenience and, in extreme cases, serious injury due to unsafe products. At the beginning of their journey, EU consumers purchasing goods from online retailers outside the EU are **not always given adequate information with which to make informed decisions.** Information provided by traders is inconsistent, and there is a lack of advice from independent sources to help EU consumers understand the significant reduction in their rights when shopping from non-EU traders. This knowledge is crucial, to ensure that consumers ascertain a trader's location before committing to an online purchase.

If things do go wrong with an online purchase, a consumer's primary goal is to get their money back. But there are **no legally binding rules to set minimum standards** for consumer protection, which may form a benchmark for redress. Consumers can attempt to resolve disputes with traders directly, which can be difficult in the global online marketplace for a variety of practical reasons, such as distance and language barriers. If consumers are unsuccessful in this approach and need additional support, there is **no tangible, accessible means of redress via public authorities or recognised bodies in global online markets.** Consumers may attempt to seek redress by way of civil action, but the lack of harmonised rules means that they must rely on disparate and fragmented provisions laid out in national legislation, or business T&Cs. In theory, EU legislation should apply to non-EU businesses that target EU consumers but, in reality, it is virtually impossible for individual consumers to enforce these rules. The Rome and Brussels Regulations may provide rules that favour consumers, but these are largely redundant in the case of consumer disputes in global online markets, due to consumers' reluctance to litigate.

In summary, taking civil action against an online retailer based outside the EU is likely to be so costly, complex and time-consuming that very few will ever start the process, let alone achieve satisfactory redress. At the present time, EU consumers' best chance to resolve disputes with non-EU traders is by utilising chargeback mechanisms or internal dispute schemes offered by online intermediary platforms.

91| https://www.icpen.org

92| Christine Riefa, G20 Consumer Summit on Building a Digital World Consumers Can Trust (2017) 3 EuCML 124-128

To exacerbate problems, **market surveillance and enforcement agencies do not have cooperative agreements at a global level** to allow them to identify cross-border traders who break the rules, and take the appropriate action.

In simple terms, EU consumers wishing to purchase from online retailers outside the EU **need better information and support at both ends of the consumer journey.** The two main areas for improvement are:

- Clear pre-purchase information to allow consumers to make informed decisions.
- Effective cross-border mechanisms for complaints-handling and dispute resolution to enable consumers to get satisfactory redress.

The first and most immediate step is to ensure that EU consumers entering the global online marketplace have access to better information and advice, and global systems of redress that are effective cross-border.

In the long-term, it is vital that minimum requirements for consumer protection are established, and that the consumer perspective is taken into account when developing legally binding trade agreements. A set of minimum requirements for consumer protection would provide a solid foundation upon which effective global systems of market surveillance, enforcement and redress could be built to ensure that rules are being followed. Simultaneously it would be important to: educate online traders about their responsibilities in the global marketplace; encourage businesses to raise standards by use of voluntary guidance that details good practice; and improve communication and cooperation between all stakeholders at an international level.

Until consumers are given adequate information and protection in the global online marketplace, consumer confidence will not be raised. If government and industry want to unlock the full potential of global e-commerce, it is essential that key barriers to cross-border e-commerce are removed. Unlike legal frameworks for consumer protection, digital markets operate without the constraints of geographical boundaries. This requires a change of approach. It is clear that, to be effective, **protection for consumers in global online markets needs to be freed from the natural borders of the state.**

It is important that proposed solutions are realistic, although they should also be innovative and aspirational. Our recommendations, detailed in **Section 10** suggest ways that the consumer protection framework can be **strengthened and improved** to minimise the problems experienced by EU consumers and give them practical ways to achieve satisfactory redress if things go wrong.

10 RECOMMENDATIONS

Protecting EU consumers in the global online marketplace is extremely complex and presents many challenges. However, throughout this study, a number of possible solutions have emerged.

10.1 Consistent rules for consumer protection

A principal objective is to achieve consistent levels of consumer protection for online purchases. These should be equal to those for offline purchases, and take into account the weakened position of consumers when shopping online compared to offline, something which is a key principle of both the OECD and UN guidelines. To effectively strengthen consumer protection, rules need to be specific and legally binding.

Achieving a harmonised legal framework at a global level is clearly not a viable option as it would require all countries to agree to common rules. Even if every country agreed to the idea in principle, there is no one-size-fits-all approach, and cultural and economic differences at international level would add an insurmountable layer of complexity. In addition, EU consumers would risk a dilution of their relatively high level of consumer protection, as any remedies are likely to offer a lower level of protection than EU consumers currently enjoy.

A solution could be the development of a minimum set of good practice requirements for consumer protection, which individual countries or regions could incorporate into their own laws. These should go further than 'principles', defining specific terms and time limits, for example, regarding the information that must be disclosed by online traders, a consumer's right to cancel and get a refund, and an obligation to give information about ADR/ ODR schemes. Countries could go above and beyond these minimum requirements, but there would always be a consistent and enforceable baseline for consumer protection.

Key recommendations

- To achieve levels of consumer protection for online purchases that are equal, or not less than, those for offline purchases.
- To develop a set of minimum requirements for consumer protection, with specific terms.

10.2 Harness political will to deliver binding consumer protection

10.2.1 Harness political will

There is a growing trend for politicians to acknowledge the importance of consumer protection in the digital world, for example, the G20 Consumer Summit and subsequent Hamburg G20 Leaders' Declaration[93] on shaping an interconnected world. This is a trend that should be harnessed to further the consumer protection agenda. However, this commitment needs to ensure it moves towards tangible solutions rather than being limited to political declarations.

One suggestion for harnessing political will to achieve tangible benefits for consumers, is to press for the **creation of a Consumer 20** dialogue process. The Dusseldorf Declaration recognises the role of other stakeholder groups – such as Women W20, Business B20, Youth Y20 and Labour L20 - for their contributions. A 'Consumer20' group would raise the profile of consumer protection – both online and offline - and provide a forum to exchange information and best practices, and to uncover solutions. It would also ensure that consumer protection remains on the political agenda. It is therefore vital for consumer organisations, such as **BEUC** and Consumers International, to remain engaged in all such fora, as well as for national organisations, such as **vzbv**, to continue to put pressure on their respective governments.

10.2.2 Legally binding deliverable

Free trade agreements could be an instrument to enhance consumer protection through legally binding documents, providing an anchor point for minimum consumer protection requirements and restoring consumer trust in global e-commerce.

Currently trade agreements fail to address key issues of consumer protection. Although consumer protection is increasingly mentioned, endeavors stop significantly short of seeking common rules or de-

93| https://www.g20.org/gipfeldokumente/G20-leaders-declaration.pdf

livering any meaningful protection in the areas that consumers need it most. The main purpose of trade agreements is to facilitate trade, and delivering this is often seen as diametrically opposed to delivering consumer protection. Consumer welfare needs to be recognised as equally important and central to negotiations. After all, consumers are the drivers of international trade and the ultimate users of most products and services being traded. It is imperative that those negotiating trade agreements understand that **inadequate consumer protection is a key barrier to international trade** and that addressing this is a priority.

Trade agreements need to offer tangible consumer protection that delivers real benefits for consumers. One solution suggested by **BEUC** and **vzbv**, is for trade agreements to include a dedicated consumer chapter containing specific references to key consumer protection issues such as provision of better pre-purchase information, clear disclosure of trader location, limitations to geo-blocking, a right to cancellation and a right to a means of redress.

Such references could only be voluntary as anything that was legally binding would require another jurisdiction to legislate. It is not the role of trade agreements to decide this and it is not possible to unilaterally impose one country's legislation on another. It is important for trade agreements to preserve the right for individual jurisdictions to regulate, especially in the digital sector where things change rapidly. So, trade agreements should avoid creating obligations that restrict opportunities or prevent governments from addressing consumer issues that have not yet arisen. In addition to ensuring that new trade agreements start incorporating impactful consumer protection considerations, existing agreements would need to be reviewed.

It is also crucial that consumer input is sought at relevant stages, where there is opportunity for real influence. In the standards model, legislation requires key stakeholders to be involved – including industry and consumers. Trade deals are currently negotiated behind closed doors. For some trade negotiations, stakeholder views are sought, for example through advisory groups or informal communications, there is no obligation to involve consumer stakeholders and no formal process for their voice to be heard. A formal process for consumer stakeholders to be an obligatory part of negotiations would be a better solution.

Taken together, the OECD and UN frameworks outline the essential components for developing an overarching set of protections for consumers online and these could be used by those negotiating trade agreements, and other policy makers, as a basis for further consumer protection work in this area.

Key recommendations

- Harness political will to move from political declarations to tangible solutions.
- Creation of a Consumer 20 group – to protect interests of consumers both online and offline.
- Recognition that inadequate consumer protection is a barrier to trade.
- Free trade agreements to deliver minimum consumer protection requirements that secure the rights and interests of EU consumers.
- Make the improvement of consumer protections and empowerment part of the stated goals of EU trade policies.
- A dedicated consumer chapter in all trade agreements containing references to key consumer protection issues.
- Consumer stakeholders to be given access to the content of trade agreement discussions at an early stage and a formal procedure for taking their views into consideration during the negotiation process.

10.3 Enable consumers to make informed decisions

10.3.1 Consumer education and awareness

Better information and advice for EU consumers in the global online marketplace could help to redress the current imbalance of power. At present, there is no central, easily accessible source of information or advice available to EU consumers who want to shop outside the EU. Consumer advice given by the European Commission focuses on rights pertaining to cross-border shopping within the EU. Umbrella consumer organisations such as Consumers International, **BEUC** and **vzbv** tend to focus their efforts at a higher policy level, for example getting the consumer voice heard in trade negotiations and the development of international guidelines, rather than giving advice to individual consumers about their rights.

It is essential that consumers are made aware of their reduced rights, and lack of opportunities for effective redress, when buying from outside the EU. A centralised information point, summarising consumer rights in the global online marketplace, with practical advice on what to look for before purchase and what to do in the event of a problem, would be extremely valuable for consumers in the short term, until an international scheme on the same lines as the ECC could be established (see **section 8.2.3**). This central information hub or 'one-stop-shop' could be promoted by consumer and public interest organisations at national and European level to help raise awareness.

It could also offer advice to consumers of the practical steps they can take to protect themselves when shopping online. For example, by making sure that the devices used to access e-commerce sites (e.g. laptops, tablets and smartphones) are set up securely.

Consumers also need better information about fraudulent sites, possible scams, and counterfeiting so that they can avoid 'blacklisted' sites. Public authorities dealing with global complaints and enforcement could compile such lists based on intelligence data and cases handled. Other solutions may include exploring smart contracts and how they may assist consumers engaged in transactions cross-borders.

10.3.2 Information given by traders

The evidence summarised in this report shows that many negative experiences arise from consumers unwittingly entering the global marketplace, not understanding the legal implications of shopping outside the EU or how to enforce any rights they do have. Information about where the trader is based, applicable law and contact details is often difficult to find, but this is central to consumers making informed purchasing decisions and proceeding without this information is potentially very risky.

It is crucial that consumers are given timely, accurate, relevant and accessible information so that they can make informed choices. However, there are currently no international rules defining what information businesses must provide to potential customers. As discussed in **section 8**, the majority of international cross-border disputes will ultimately rely on contract law, and the T&Cs that the consumer has agreed to before purchasing, although some contractual terms could be deemed unfair. Evidence suggests that consumers are unlikely to read lengthy T&Cs, let alone understand them, so it is imperative that they are fair, clear, written in consumer-friendly language and flagged to potential buyers before they click 'buy'. They should inform consumers of which law will be applicable to disputes.

This could be achieved through the creation of minimum requirements for consumer protection, as outlined in **section 10.1**, or through education of businesses. Some online traders are simply not thinking about cross-border customers and need guidance on what constitutes good practice. International guidelines (**section 4.3**) and voluntary standards (**section 4.5**) should be promoted as they offer detailed guidance on good practice in specific areas. New international standards that may be useful to global e-commerce, should be considered. For example, an ISO standard for terms and conditions could help businesses to understand what constitutes good practice in this area.

All businesses operating cross-border should be proactive in respecting and raising levels of consumer protection. However, large global businesses should be expected to lead the way, and set the bar high, by demonstrating good practice that meets consumer expectations.

10.3.3 Industry codes

Consumers often use industry codes and trust marks to help them decide which traders to use, but the plethora of different logos can be confusing. A single overarching international scheme to monitor and approve industry codes that meet certain consumer protection criteria, could boost confidence in the global online marketplace and help consumers to decide which traders are trustworthy. The scheme, which could replicate the model of the Consumer Codes Approval Scheme run by Trading Standards in the UK,[94] could be supported global e-commerce trust mark, with one recognisable logo.

Another potential solution is the creation of a new ISO standard, that details good practice for developing trust marks, approval schemes and associated codes of practice.

Key recommendations

- An online 'one-stop-shop' providing information and advice to EU consumers entering the global online marketplace – what to look out for, what to do if there is a problem.
- Development of a global network of information and advice centres coordinated at an international level with reciprocal agreements between different states.
- A 'blacklist' of unlawful and fraudulent sites so that consumers know which ones to avoid.
- Minimum requirements for business information disclosure and promotion of good practice guidelines.
- Education of businesses to raise awareness of responsibilities in the global marketplace
- Encourage good business to raise level of consumer protection practice that meets consumer expectations.
- Increased responsibility and liability of intermediary sites and global businesses.
- An international approval scheme for e-commerce trust schemes and industry codes – similar to the Consumer Codes Approval Scheme run by the Trading Standards Institute in the UK - to approve industry codes that meet certain consumer protection criteria.

10.4 Promote good practice through voluntary standards

International standards (e.g. ISO/ IEC) give detailed and practical guidance on what constitutes good practice in the areas of e-commerce and digital consumer protection. They provide businesses with an aspirational benchmark, as well as a detailed checklist of how to implement change, and their use can help to raise standards in industry. Standards are even more effective if they are also used by governments to inform the development of national legislation, as this makes them mandatory and enforceable.

However, because they are voluntary, online retailers are not bound to follow standards so digital consumers cannot rely on them for practical support in terms of enforcement or redress. Their voluntary nature means that only 'good' traders are likely to use standards, meaning that the good get better.

94| https://www.tradingstandards.uk/commercial-services/approval-and-accreditation/the-consumer-codes-approval-scheme

Standards cannot tackle online retailers at the other end of the scale who have no interest in applying good practice. In those cases, legally binding and enforceable rules are needed.

Bearing these limitations in mind, it is still important that the consumer voice is heard in the development, and promotion, of standards relevant to digital markets. For example, ANEC and Consumers International have collaborated in the development of the ISO 20488 online reviews standard and intend to do so in the new ISO on inclusive service. The forthcoming revision of ISO 10008 E-commerce in 2018 presents a valuable opportunity for BEUC and national consumer organisations to liaise with these organisations to ensure that key consumer issues are addressed.

Consumer organisations also have a role to play in raising awareness of the benefits of using voluntary guidance to both businesses and governments. Businesses following good practice can streamline processes, save money, reduce complaints and enhance their reputation.

Key recommendations

- Promote use of standards to governments and other political decision makers as detailed guides of good practice in relevant areas e.g. complaints-handling.
- Continue to liaise with standards bodies at national, European and international level (e.g. ANEC and ISO COPOLCO) to share information about key consumer issues that might be addressed through standards.
- Contribute to the update of ISO 10008 E-Commerce standard.
- Contribute to the development of new ISO standard on inclusive service to ensure that the needs of all digital consumers are met.
- Encourage and support a new ISO international standard on industry approval schemes, which defines good practice for developing trust marks and associated codes of practice.
- Encourage and support a new ISO international standard on terms and conditions.

10.5 Review liability of intermediary sites

Research shows that the majority of cross-border e-commerce transactions, on a global scale, use online platforms such as eBay, Amazon and Alibaba.[95] Other intermediaries that facilitate cross-border transactions, such as Uber and Airbnb are increasingly coming under scrutiny. The contribution of all intermediary platforms to consumer protection should not be underestimated. How much liability platforms should shoulder when transactions go wrong has been the subject of on-going debate in the EU[96] for the best part of ten years and predates the development of social commerce. The prevalent legal position is that intermediary platforms are subject to the E-commerce Directive, which offers hosting sites an exemption from liability for illegal content that they do not have control or knowledge over.[97] While it was first envisaged that the exemption was all encompassing, the Court of Justice of the European Union has come to narrow its scope. It is limited to 'neutral hosts' that behave like 'diligent economic operators' in their discovery and removal of any litigious materials.[98]

95| IPC 'Cross-border e-commerce shopper survey 2016', January 2017

96| See for example, on online auction sites, Christine Riefa, Consumer Protection and Online Auction Platforms, towards a safer legal framework (Ashgate/ Routledge 2015) 175.

97| See Article 14 E-Commerce Directive, Council Directive (EC) 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market [2000] OJ L178/1.

98| See Joined Cases Google France SARL, Google Inc v Louis Vuitton Malletier SA (C-236/08) v Viaticum SA, Luteciel SARL (C-237/08) and Google France SARL v Centre National de Recherche en relations humaines (CNRHH) SARL, Pierre Alexis Thonet, Bruno Raboin, Tiger SARL (C-238/08) [2010] I-02417; See also Case C324/09 L'Oréal SA and Others v eBAy International AG and Others [2011] I-06011.

It is not possible under the Directive to impose a general monitoring obligation on e-commerce platforms, but specific requirements are possible.

Consumer behaviour and expectations have evolved over time and, while legal liability remains limited, intermediaries should be expected to be proactive in raising levels of consumer protection and policing their own platforms. For example, for intermediary e-commerce platforms, this could be done by:

- setting rules;
- removing any users (or content) that breach those rules; and
- ensuring that there are mechanisms in place to prevent such users or content from reappearing.

In addition, platforms should be expected to help consumers by putting in place robust internal dispute mechanisms and fair compensation. Many of the key e-commerce players have already 'self-regulated' to some extent, due to competitive pressure, and have developed their own framework for resolving disputes between participants. For example, eBay and PayPal offer internal resolution mechanisms (eBay Money Back Guarantee and PayPal Buyer Protection).[99] Although these ADR mechanisms are not always as comprehensive as legal redress available via a court, they do offer some help to consumers who are looking for a quick resolution to their dispute.

Inevitably, there will be situations where platforms are not going as far as one would hope, simply because the law is not forcing them to do so. The European Commission does not envisage a reform of the liability of hosts under the E-Commerce Directive. However, within the context of the REFIT of consumer law, the EC is taking a closer look into mandatory information requirements for online platforms and potential liability.[100] Strengthening the liability of intermediaries in that context seems important. In its recent 'Fitness Check of EU Consumer Law' BEUC called for online platform operators to provide correct and valid information towards consumers and be liable:

- for the failure to inform the consumer that a third party is the actual supplier of the goods or service, thus becoming contractually liable vis-à-vis the consumer;
- for the failure to remove misleading information given by the supplier and notified to the platform;
- for guarantees and statements made by the platform operator;
- if they have a predominant influence over the supplier and the consumer relies on it;
- for the performance of a contract, such as payment and delivery carried out by the platform for third party suppliers in line with Art. 2 (2) of the Consumer Rights Directive (joint liability).[101]

When it comes to payments, it may also be beneficial to work with all payment services intermediaries to encourage them to offer mechanisms akin to chargeback for payment by credit and debit cards, and to include e-money and other crypto-currencies (e.g. Bitcoin) should they continue to develop.

Key recommendations

- Encourage online platforms to be more proactive in protecting consumers and policing own sites.
- Support the regulation of online platforms and intermediaries.
- Support legislation that clarifies and increases liability of intermediaries when things go wrong.

99| Christine Riefa, Consumer Protection and Online Auction Platforms, towards a safer legal framework (Ashgate/ Routledge 2015) 157.

100| http://ec.europa.eu/consumers/consumer_rights/review/index_en.htm

101| http://www.beuc.eu/publications/beuc-x-2017-040_csc_fitness_check_of_consumer_law_policy_recommendations.pdf

10.6 Global complaint and dispute resolution schemes

Before online shopping, there was little demand for an international cross-border system for dispute resolution, as relatively few consumers were purchasing goods or services from traders in other countries. However, **the traditional bricks and mortar legal system, based on jurisdiction, is simply not 'fit for purpose' for 21st century consumers in global online markets.**

This study demonstrates that consumers find it extremely difficult to achieve satisfactory redress in disputes with online retailers based outside the EU. The complexity, cost and effort required to take civil action (see **section 8**) renders this an unrealistic solution for most individual consumers. This, combined with the lack of international dispute resolution schemes, effectively prevents consumers from achieving satisfactory redress.

Moving forward, there must be emphasis on providing effective means of dispute resolution at an international level, and finding suitable solutions outside the realm of courts, wherever possible. Data from complaint schemes should be collected, to help inform consumer policy work, tailor advice to consumers and ensure continual improvement.

10.6.1 International consumer centres (ICCs)

As described in **section 8.2.3**, if EU consumers have a problem with an online retailer within the EU, they can contact the European Consumer Centre (ECC) in their home country for free advice and referral to an independent dispute resolution service. However, if they experience a problem with an online trader based outside the EU, ECCs cannot help to resolve disputes as ECC-Net does not have reciprocal partners in countries outside the EU.

A network of International Consumer Centres could be created, whereby consumer centres around the globe have reciprocal agreements to help consumers with cross-border disputes. Many countries already have centres that deal with consumer complaints domestically, so the main task would be to create an overarching body to coordinate the work of the network. Official data about the frequency and nature of complaints could to help inform the work of consumer protection agencies and the analysis of data could help to compile a list of websites or traders who are acting unlawfully, so that consumers can avoid them.

Econsumer.gov, operated by ICPEN, deals with cross-border complaints but is limited to scams, and does not resolve individual cases. One possibility might be to expand the remit of this organisation, if the necessary infrastructure and communications already exist at an international level.

10.6.2 Online dispute resolution (ODR)

ODR can help consumers to avoid some of the issues associated with conflicts of law, jurisdiction and enforcement of judgements in foreign countries. The development of effective global ODR mechanisms is therefore essential to ensure adequate protection for digital consumers.

The United Nations Commission on International Trade Law (UNCITRAL) Working Group III (ODR) is currently working on a non-binding document to describe the principles of ODR for e-commerce disputes. Further work would be needed to get these principles widely accepted, and perhaps form the basis of a legally binding document in future.

A report by the UK's Civil Justice Council,[102] calls for a new Internet-based court system, which would allow civil disputes up to £25,000 to be resolved without disproportionate legal costs. It claims that this would better meet the needs of 21st century consumers, improve access to justice and resolve disputes

102| Civil Justice Council, 'Online Dispute Resolution for low value civil claims', Feb 2015

more easily, quickly and cheaply. Innovative solutions such as this could help to protect consumers in the global online marketplace.

10.6.3 Collective redress

This study highlights the difficulties faced by individual consumers when trying to achieve satisfactory redress via civil action. In cases where consumer detriment is high, and affects large numbers of people, class actions (perhaps led by consumer organisations) could be a good avenue for consumers to pursue redress, helping to strengthen the consumer position and increase chances of success.

However, at this time, it is not realistic to envisage consumer cross-border collective actions because of the obstacles in place (see **section 8.5.3**). Further work would be required to identify practical steps that need to be taken to make this a realistic possibility.

Key recommendations

- Development of effective global ADR/ ODR mechanisms.
- Creation of International Consumer Centre Network to handle disputes with traders based in non-EU countries.
- Expand remit of ICPEN to deal with individual cases, if necessary infrastructure already exists.
- Creation of a database to log consumer complaints received. Statistical data could be used to inform consumer organisations, shape policy work, and tailor information and advice given to consumers.
- Support work by UNCITRAL on ODR for e-commerce disputes.
- Move towards online court systems, which are not defined by geographical boundaries.
- Explore ways to strengthen the consumer position through collective redress.

10.7 Global enforcement system

Previous chapters have highlighted the importance of market surveillance and enforcement in the global online marketplace. It is essential that solutions are sought for international enforcement across borders, as this is the only way to ensure that consumers are adequately protected. Stronger cooperation between enforcement agencies is an essential first step, although the end-point should be a global enforcement system.

Enforcement networks already exist in the EU and at an international level. However, at present, the CPC in Europe does not have a formal agreement with ICPEN. Creating a formal agreement to work together would help to strengthen protection for EU consumers in the global online marketplace. Before this can happen, public enforcement authorities need adequate resources to strengthen their institutional capacities. Enforcement authorities also need to play their part in educating businesses and consumers and raising awareness of their role.

According to OECD, governments need to: *'Improve the ability of consumer protection enforcement authorities and other relevant authorities, as appropriate, to cooperate and coordinate their investigations and enforcement activities, through notification, information sharing, investigative assistance and joint actions'*. The UNCTAD Secretariat is currently developing a 'consumer map' of enforcement agencies responsible for consumer protection.

Communication between businesses and enforcement agencies needs to be improved. Ultimately, it would be useful to introduce a system for governments across the globe to share information about unscrupulous traders. This could work in a similar way to the Rapex system of recalls of dangerous products, or in a similar way to Interpol.

Key recommendations

- CPC to seek binding agreements of cooperation with ICPEN to strengthen global cross-border enforcement.
- Creation of a global enforcement mechanism to protect consumers in the global marketplace.
- Ensure that public enforcement authorities have adequate resources to fulfil responsibilities.
- Compilation of a 'blacklist' of problem companies.

10.8 Need for further research

The collection of comprehensive data about the quantity and nature of problems experienced is essential to ensure that consumers receive adequate protection in the areas that they need it most. This research highlights a lack of empirical data about EU consumers' experience of shopping from sites based outside the EU. The absence of an international complaints system means that consistent and comparable complaints data is not available.

A survey of EU consumers, and a mystery shopping exercise [103], to complement this study, would provide valuable information, which consumer organisations could use to shape further policy work in this area. Any future work should target established e-commerce channels, in addition to emerging ones, such as social media platforms (e.g. Facebook) that are increasingly developing buy and sell features enabling users to transact via their intermediary site.

Key recommendations

- Regular surveys of EU consumers on experiences in the global online marketplace
- Mystery shopping exercise to assess current business practices employed by non-EU traders.
- Work to include established e-commerce channels, plus social commerce.

103| For an example see: Consumers International 'Should I Buy? An international comparative study of electronic commerce', 2001

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Annex 1
RESEARCH METHODOLOGY

Legal analysis

Overview of the legal framework applicable to EU consumers shopping outside the EU, with a focus on five countries (USA, China, Japan, Switzerland, Brazil) where examples of national legislation was relevant and useful.

BEUC member survey and data request

A request was sent to all 43 BEUC members asking them to:

- Complete a brief online survey about their views on consumer protection in the global online marketplace; and
- Provide any research or complaints data to substantiate their views.

In total, nine organisations responded to the survey with three providing evidence related to global e-commerce. Of the remaining organisations, many felt unable to respond to the survey questions as they had not conducted any research into this area, with which they could inform their response.

Literature review

- Desk research was carried out to gather information about:
- Existing market research data about trends in cross-border online shopping
- Existing European complaints data related to online shopping
- European policy related to online shopping
- Existing consumer protection in the area of online shopping (regulation, directives and standards)
- Existing studies and reports of a similar nature

Expert interviews

Telephone interviews were conducted throughout July and August 2017 with people from the following organisations:

- BEUC
- Consumers International
- European Commission, DG Justice
- European Commission, DG Trade
- Institute for Information Law (IViR) at the University of Amsterdam
- ISO COPOLCO
- Privacy International
- Public Citizen's Global Trade Watch
- School of Public Policy (SPP), Central European University, Budapest

Annex 2
STANDARDS

International standards that may be relevant to global e-commerce:

STANDARD	OVERVIEW
BS 18477: 2010 Inclusive service provision. Requirements for identifying and responding to consumer vulnerability	British Standard – to form the basis of a new ISO. This standard helps service providers identify those in vulnerable circumstances and helps to ensure that all consumers may access and use the service.
ISO 10001. Quality management. Customer satisfaction. Guidelines for codes of conduct for organisations.	Provides guidance for planning, designing, developing, implementing, maintaining and improving customer satisfaction codes of conduct.
ISO 10002:2014. Quality management. Customer satisfaction. Guidelines for complaints handling in organisations.	Gives advice for organisations on how to set up and manage efficient complaints-handling systems, and deal with complaints effectively.
ISO 10003:2007. Quality management. Customer satisfaction. Guidelines for dispute resolution external to organisations.	Provides guidance for organisations to plan, design, develop, operate, maintain and improve effective and efficient external dispute resolution for product-related complaints.
ISO 10004:2012. Quality management. Customer satisfaction. Guidelines for monitoring and measuring.	Provides guidance in defining and implementing processes to monitor and measure customer satisfaction.
ISO 10008:2013. Quality management. Customer satisfaction. Guidelines for business-to-consumer electronic commerce transactions.	Provides guidance to organisations for developing, implementing, and maintaining an effective and efficient system concerning business-to-consumer electronic commerce transactions (B2C ECT).
ISO 10377:2013, Consumer Product Safety – Guidance for suppliers	Practical guidance to suppliers on assessing and managing the safety of consumer products, including effective documentation of risk assessment and risk management.
ISO 18295-1: 2017 Customer contact centres. Part 1. Requirements for customer contact centres.	Specifies service requirements for customer contact centres of all sizes, across all sectors and all interaction channels, including inbound and outbound.

ISO 18295-2: 2017 Customer contact centres. Part 2. Requirements for using the services of customer contact centres.	Specifies requirements for organisations using the services of customer contact centres.
ISO 20488 Online reviews	Under development. Will cover the principles and requirements for collection, moderation and delivery for online consumer reviews.
ISO 9001, Quality management systems — Requirements	This series of standards provides guidance and tools for companies and organisations to ensure that their products and services consistently meet customer's requirements, and that quality is consistently improved
ISO 9004:2009, Managing for the sustained success of an organisation — A quality management approach	Provides guidance to organisations to support the achievement of sustained success by a quality management approach. It is applicable to any organisation, regardless of size, type and activity.
ISO 9241-151, Ergonomics of human-system interaction — Part 151: Guidance on World Wide Web user interfaces	Provides guidance on the human-centred design of web user interfaces with the aim of increasing usability. Includes recommendations on content design; navigation and search; content presentation.
ISO/IEC 27001:2013, Information technology — Security techniques — Information security management systems - Requirements	Specifies the requirements for establishing, implementing, maintaining and continually improving an information security management system within the context of the organisation.
ISO/IEC 27002:2013, Information technology — Security techniques — Code of practice for information security controls	Guidelines for organisational information security standards and information security management practices, including the selection, implementation and management of controls taking into consideration the organisation's information security risk environment(s).
ISO/IEC 40500:2012 Information technology -- W3C Web Content Accessibility Guidelines (WCAG) 2.0	Following these guidelines require organisations to: design accessible and usable websites for all Internet users.
ISO/TS 20245:2014, Cross-border trade of second–hand goods	Establishes minimum screening criteria for goods that are traded, sold, offered for sale, donated, or exchanged. It is applicable to goods intended for consumers which are shipped across at least one international border. The aim is to protect consumers' health, safety and the environment in which they interact.

Annex 3

NATIONAL LEGISLATION REQUIREMENTS COMPARED

	UNITED STATES	BRAZIL	CHINA
Summary of consumer protection law	There is no single, comprehensive federal law or code governing consumer protection. Federal law varies by state. Relies heavily on case law.	Laid out in the consumer defence code (Codigo protecao e defesa do consumidor), which contains all rules pertaining to consumer protection.	Mainly laid out in Law of the People's Republic of China on Protection of Consumer Rights and Interests.
Disclosure of information	N/A	Traders must give clear and accurate information about: contact details, products and services, total cost (inc. delivery), terms of delivery, potential risks.	Traders must provide clear information about products, costs, rules on returns and exchanges
Order confirmation	None	N/A	N/A
Cooling-off period[104]	None (except 24 hours for airline tickets).	Right to cancel within 7 days following receipt of goods.	Right to cancel within 7 days, following receipt of goods.
Contracts / T&Cs	None	Traders must: present a summary of the contract before agreement; provide effective tools for consumer to correct errors; make the contract available in a 'saveable' format immediately after the contract conclusion.	N/A
Delivery time	N/A	N/A	N/A
Defective products	Consumers must rely on contract law or charge-back.	Consumer entitled to replacement, repair or partial refund, within 30 days – or less if agreed.	Right to return within 7 days if product faulty. Trader must bear costs of return.

104| Usually excludes certain items such as perishable goods, custom-made, digital content

The table below summarises national legislation that gives specific rights to consumers making online purchases. It does not take contract law into consideration. (N/A = no evidence of national legislation found)

JAPAN	SWITZERLAND	EUROPEAN UNION
Mainly laid out in the Consumer Basic Act of 1994, but complemented by many other provisions e.g. Civil Code and Consumer Contracts Act.	Consumer protection is recognised in the federal constitution since 1981. But legal framework is out of date and does not cover digital markets.	Laid out in EU Directive on Consumer Rights.
N/A	Traders must provide information on main characteristics of a product, but no details of what should be included.	Traders must provide clear, accurate information before purchase including: contact details, cancellation rights, total costs including delivery, details of dispute resolution
N/A	None	Traders must send written confirmation of transactions.
Right to cancel within 8 days, following receipt of goods.	None – although 14 days for purchases made over the phone.	Right to cancel and return orders within 14 days of receiving goods.
If there is an error in the acceptance of an e-contract, the law is in favour of the consumer. The law bans unfair terms e.g. where a business limits its liability for damages, or terms are one-sided to the detriment of consumers.	None	Prior information forms part of the contract unless the consumer and trader jointly agree on changes to the terms. Must be written in plain and understandable language and cannot contain unfair contract terms.
N/A	N/A	Within 30 days unless specifically agreed with the trader. Trader must inform if a product cannot be delivered on time or has to be substituted. If trader fails to deliver within agreed time customer can terminate the contract and be reimbursed.
Traders are liable for defects and damages.	Vendor responsible for defects. Consumer entitled to cancel contract, replacement or price reduction unless T&Cs specify otherwise.	A trader must repair, replace, reduce the price or give you a refund if goods are faulty or not as advertised. There is a minimum 2-year guarantee for all goods.

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Supported by:

Federal Ministry of Justice and Consumer Protection

on the basis of a decision by the German Bundestag

This study is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).

A **one-stop shop** for consumer information on shopping **outside** the European Union.

Consumers must be made aware of their (reduced) rights, and possibilities for redress, when shopping in the global online marketplace.

- Summarises consumer rights in the global online market place.
- Informs what to look out for if purchasing.
- Advises what to do and whom to turn to in the event of a problem.

BEUC The European Consumer Organisation
The Consumer Voice in Europe

This study is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).

verbraucherzentrale Bundesverband

Supported by:
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A CHOPPY ONLINE JOURNEY

European consumers need better protection when choosing, buying and receiving an online product.

THE SITUATION

In the global online market, EU consumers lack essential pre-purchase information, may encounter negative surprises once the purchase has been made and face difficulties to act when something goes wrong.

WHY WOULD A EUROPEAN CONSUMER SHOP WORLDWIDE?

Consumers shopping outside the EU do so for reasons of price, availability and specific needs (language, diet). Research shows that global shopping also happens unwittingly, for example through intermediary websites or unclear information about a trader's location.

4 steps, many hurdles

Maïa will think twice about ordering a laptop online with a trader from outside the EU. This is because she lacks information and support throughout her global shopping journey.

BEUC The European Consumer Organisation
The Consumer Voice in Europe

verbraucherzentrale Bundesverband

A CHOPPY ONLINE JOURNEY

European consumers need better protection when choosing, buying and receiving an online product.

WE RECOMMEND...

- To **make more information available to consumers when they shop online outside the EU**. This can take the form of a contact point where consumers may turn for information and advice.
- Effective **systems of market surveillance, enforcement and redress** should be developed. This is so that consumers can act if something goes wrong with a purchase on the global online marketplace. It can take the form of better international coordination between consumer protection authorities, or the extension of EU dispute resolution systems to companies from third countries. The possibility for consumer organisations in third countries to act on behalf of EU consumers in court claims should also be looked at.

ABOUT THE ORGANISATIONS

The European Consumer Organisation (BEUC) acts as the umbrella group in Brussels for 43 independent national consumer organisations. Its main task is to represent them at the European level and defend the interests of all Europe's consumers.

Verbraucherzentrale Bundesverband (vzbv) acts as the umbrella group for 40 German consumer associations and is a founding member of BEUC. It represents the interests of German consumers vis-à-vis politicians and policy-makers, the private sector and in public.

This study is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).

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