

E-COMMERCE AND CONSUMER PROTECTION IN INTEGRATED MARKETS

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ABSTRACT

Consumer protection by European private international law rules have acquired a new dimension that has led to a new paradigm. This change to which I refer arises from amendments to legislation and new ECJ case law in the field of e-commerce. Firstly, the BIR recast establishes universal rules of jurisdiction in consumer contracts. The reform has eliminated the existence of two different jurisdictional regimes in matters relating to consumer contracts in order to create a unified European system, eliminating the possibility for the national courts to apply the so-called residual jurisdiction rules. Secondly, European Court of Justice case-law concerning e-commerce transactions has shifted its focus to the conduct of suppliers instead of the traditional distinction between active and passive consumers. This new focus covers a wider range of cases in which the consumer is protected. Both changes have greatly increased the protection of the consumer when entering into an international contract. From a European perspective, this should be seen as a step further in the evolution of European consumer policy and its goals. However, more difficulties arise when explaining such an extension from an international perspective. The application of both extensions to situations connected to third states may result in an unrealistic and inefficient overprotection of the consumer which may jeopardize any attempt to globally unify the rules on consumer protection.

This paper examines consumer protection rules when entering into e-commerce transactions in an integrated market (the European Union) from an *ad intra* (ie covering relationships connected to Member states) and an *ad extra* (connected to third States as well) perspective. As will be shown, although European legislature offers the same level of

protection for European consumers entering into transactions with supplier domiciled outside the EU and those who benefit from the internal market, this is not yet possible due to the differing aims of *ad intra* and *ad extra* consumer transactions.

From a procedural point of view, the EU has devoted significant effort in ensuring European consumers' access to justice. Nevertheless, many of the legislative mechanisms set forth do not apply to consumer transactions connected to third states. Furthermore, the adoption of Directive 2011/83/UE on consumer rights has moved away from the minimum harmonisation approach to full harmonisation of some key regulatory aspects. This change reduces the choice of law problems in intra-community consumer transaction. For this reason special attention will be given to the *ad extra* perspective.

In order to understand the significance of the above mentioned changes and their impact it is first necessary to examine the key elements of the consumer protection rules within the Brussels I Regulation and the traditional distinction between active and passive consumers. The aforementioned extensions of the protective jurisdiction rules will then be analyzed: initially, the universal application of the so-called 'forum actoris' offered to the European consumer and subsequently, the recent ECJ case-law interpreting broadly the requirements laid down in the protective jurisdiction rules with the view to expand the protection available to the consumer.