

I. Historical Development

Since the 1970s, the European Communities were trying to articulate certain consumer protection law programs (with reference to President *Kennedy's* 1962 "Consumer Bill of Rights")¹. A lack of compromise between the Member States led the European legislator to concrete first results in that area, only significantly later,² for instance in the 1980s³ and 1990s⁴. In that way, several types of contract which proved to become more influential over the years were mirrored, for the consumers' benefit.

The EU followed this path and issued, among other activities, a special European Consumer Agenda in 2012⁵ which, due to further technological development and its needs to be addressed,⁶ aimed at further

¹ Cf. *Mayer, Robert N.*, The US Consumer Movement: A New Era Amid Old Challenges, in: *The Journal of Consumer Affairs*, Vol. 46, No. 2, Special Issue on Product Literacy (Summer 2012), pp. 171 et seqq. (171 et seq.). More generally, cf. *Schwartz, Victor E. / Behrens, Mark A. / Silverman, Cary / Tedesco, Rochelle M.*, Consumer Protection in the Legal Marketplace: A Legal Consumer's Bill of Rights is Needed, in: *15 Loyola Consumer Law Review* 1 (2002), pp. 1 et seqq.

² To understand the struggle better, cf. generally *Schricker, Gerhard*, Die Angleichung des Rechts des unlauteren Wettbewerbs im Gemeinsamen Markt, in: *WRP* 1977, pp. 1 et seqq.; *Möstl, Markus*, Grenzen der Rechtsangleichung im europäischen Binnenmarkt, in: *EuR* 2002, pp. 318 et seqq.; *Bock, Yves*, Rechtsangleichung und Regulierung im Binnenmarkt. Zum Umfang der allgemeinen Binnenmarktkompetenz, Baden-Baden 2005, especially pp. 1 et seqq.

³ Cf. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372 of 31 December 1985, p. 31).

⁴ Cf. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144 of 4 June 1997, p. 19).

⁵ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, A European Consumer Agenda - Boosting confidence and growth (COM/2012/0225 fin.).

⁶ Cf. Point 3 of said Communication.

consumer protection policies by the Union⁷ in order to also enhance competition matters⁸.

In 2020, the European Commission adopted a successor, the New Consumer Agenda,⁹ which effectively updated the overall strategic framework of the EU consumer policy, aiming to respond to the post-pandemic and digitalisation challenges to consumer rights.

Since one of the aforementioned US consumer rights is the collective representation of consumers' interests, the EC was already active quite early in this respect: Since 1962, the European Consumers' Union (collective representation; BEUC, Bureau Européen des Unions de Consommateurs), a kind of umbrella organisation for national consumer associations, exists.¹⁰

Furthermore, the European Consumer Consultative Group (ECCG, a "forum for the general discussion of problems relating to consumer interests", see e.g. Commission Decision 2003/709/EC¹¹) was the Commission's main forum to consult with national and European consumer organisations.¹² As part of the New Consumer Agenda it has been replaced by the Consumer Policy Advisory Group (CPAG).¹³

⁷ Cf. Point 1 of said Communication.

⁸ Cf. *ibid.*

⁹ Communication from the Commission to the European Parliament and the Council, New Consumer Agenda Strengthening consumer resilience for sustainable recovery (COM/2020/696 fin.).

¹⁰ Cf. "Who we are", accessed through <https://www.beuc.eu/about-beuc/who-we-are> (last accessed on 23 November 2023).

¹¹ 2003/709/EC: Commission Decision of 9 October 2003 setting up a European Consumer Consultative Group (OJ L 258 of 10 October 2003, p. 35).

¹² Cf. *ibid.*

¹³ Cf. European Commission, The Consumer Policy Advisory Group (CPAG), accessed through

https://commission.europa.eu/strategy-and-policy/policies/consumers/consumer-protection-policy/our-partners-consumer-issues/consumer-policy-advisory-group-cpag_en#:~:text=The%20CPAG%20is%20the%20Commission's,of%20the%20New%20Consumer%20Agenda (last accessed on 23 November 2023).

Since its establishment, the ECCG assisted the Commission by providing expert advice on EU consumer related issues, issuing opinions and participating in different fora.¹⁴ The CPAG follows this path now.

¹⁴ Cf. Fn. 11.

II. Selected Primary Legal Bases

1. General Ones

The treaties have made sure to include a great deal of provisions, emphasising the significance of the topic of consumer protection. That affects both the TEU and the TFEU, the present analysis being focussed on the *status quo* of EU primary law.

First of all, Article 3 Paras 2, 3 TEU are the basis for the avised "area of justice" within the Internal Market, including the necessary legal security also for consumers, who - due to several reasons - often are the weakest link within market participants. This general basis is further specified by the Articles 67 et seqq. TFEU, especially through the EU Council's necessary "strategic guidelines".

2. More Specific Bases

The matter of consumer protection belongs to the shared legislative competences (Article 4 Para 2 lit. f TFEU), giving the Principle of Subsidiarity¹⁵ some room through the important instrument of harmonisation¹⁶, despite the *expressis verbis* emphasis of relevant Union

¹⁵ Cf. Article 5 Para 3 TEU.

¹⁶ Cf. Articles 114 et seqq. TFEU.

policies¹⁷ as well as a generally demanded high consumer protection level¹⁸.

Said level is further emphasised by Article 169 Para 1 TFEU (that Article belonging to the health protection policy complex of said treaty); it is of high interest, though, that the level of protection can be even higher in Member States, if they deem it as being necessary.¹⁹

¹⁷ Cf. Article 12 TFEU.

¹⁸ Cf. Article 114 Para 3 TFEU.

¹⁹ Cf. Article 169 Para 4 TFEU.