

<i>Consumer Law Compendium</i>	<i>Comparative Analysis</i> General Overview	<i>1</i>
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Universität Bielefeld

# **Consumer Law Compendium**

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	General Overview	

## General Overview

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## Introduction

**1. The Project.** The EC Consumer Law Compendium presents the results of a wide-ranging study prepared for the European Commission by an international research group. It is part of the research the Commission has undertaken in the process of preparing the review of the consumer acquis. For the first time, the transposition of 8 important consumer directives into the national laws of 27 Member States is analysed. The findings of this study reveal the substantial differences between the various national implementing measures as a result of utilising minimum harmonisation clauses and regulatory options. The purpose of this introduction is to sketch some of the key aspects of this study and its methodology. A more detailed description can be found in the call for tenders which led to the contract for the production of the Compendium, concluded between the European Commission and the University of Bielefeld,<sup>1</sup> as well as in various Commission documents.<sup>2</sup>

**2. Scope of the Study.** The study covers eight Directives, namely:

- The Doorstep Selling Directive (85/577/EEC);
- The Package Travel Directive (90/314/EEC);
- The Unfair Terms in Consumer Contracts Directive (93/13/EEC);
- The Timeshare Directive (94/47/EC);
- The Distance Selling Directive (97/7/EC);
- The Price Indication Directive (98/6/EC);
- The Injunctions Directive (98/27/EC); and
- The Consumer Sales Directive (1999/44/EC).

The choice of these Directives may seem somewhat arbitrary. In particular, on the one hand, Directives 98/6/EC (Price Indication) and 98/27/EC (Injunctions) might seem out of place,

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<sup>1</sup> N° of the call for tenders: 2003/S 153-138854; published in different places on the website of the European Commission, e.g. under [ted.europa.eu](http://ted.europa.eu) (document n° 2003-138854); Service Contract No. 17.020100/04/389299: “Annotated Compendium including a comparative analysis of the Community consumer acquis” and Service Contract No. 17.020200/07/469858: “EU-Consumer Protection” – Extension of the geographical scope of the compendium to Bulgaria and Romania.

<sup>2</sup> COM (2004) 651 final, pp. 3-4.

because all the other directives share a common feature in that they regulate contract law aspects of EC consumer law. On the other hand, the abovementioned list does not contain several directives which one would expect to be included in a list of core measures of EC consumer contract law, such as the Consumer Credit Directive (87/102/EEC) or the Distance Selling of Financial Services Directive (2002/65/EC). But the choice of which directives to include in this study was had been made by the responsible Commission section when issuing the call for tenders and was, therefore, not questioned by the contractors. There is obviously a political motive for this choice: with regard to the Consumer Credit Directive 87/102, it is worth noting that it had been undergoing a thorough review during the time when the Consumer law Compendium was elaborated. As to the Distance Selling of Financial Services Directive 2002/65, which is – other than the previous directives – a full harmonisation measure, the period since it was enacted might have been considered as too short for a profound assessment of its impact on the laws of the member states.

**3. Outputs of the Study.** The study has led to two main outputs: firstly, a legal Database has been created linking the eight directives, relevant ECJ jurisprudence, national transposition measures as well as national case-law. This Database is available online and will kept up-to-date for the coming three-year period.<sup>3</sup> Secondly, the study has produced this Compendium which is, as the Commission has put it, a “comparative analysis of the different national regulations, including possible barriers to trade or distortions of competition resulting from them”. Both parts of the study, the Compendium presented in this volume and the Database, complement each other. For example, in order to avoid cluttering the text with thousands of footnotes (i.e., more than the several thousand already present), we, as the authors of the Compendium, often refrained from giving a full reference of particular transposition measures in individual member states. The relevant information can easily be found in the Database. It also goes without saying that we are aware of much of the legal literature and studies existing in the field of this study, as far as these materials are written in the languages accessible to us. However, we decided to include only limited references where necessary. More bibliographical information can also be obtained from the Database.

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<sup>3</sup> Directly accessible via <http://www.eu-consumer-law.org>; or – via the homepage of the European Commission: [http://ec.europa.eu/consumers/rights/cons\\_acquis\\_en.htm](http://ec.europa.eu/consumers/rights/cons_acquis_en.htm).

**4. Time Schedule.** It was a great challenge to undertake a comprehensive transposition review for eight directives in 27 member states. This has never been attempted before to such an extent and density. In the course of this endeavour, it turned out that the task needed much more effort and time than originally expected. Work began in October 2004 and was initially envisaged to be concluded in April 2006 for the (then) 25 Member States. When it became clear then that the study could not be finalised at this point of time, the Commission granted an extension until December 2006. This is the reason why the Compendium and the Database were first presented in December 2006. The analysis has been completed by including also the two new Member States which acceded to the Union in 2007, therefore, this second edition of the Compendium now contains the findings regarding the 27 Member States. Information on the transposition of the eight directives in Bulgaria and Romania can also be retrieved from the database.

**5. Methodology.** The preparatory research in the 27 member states was conducted by colleagues from the individual countries. A list of participants and contributors is appended to this introduction. The initial step, in order to build up the Database and to draft this Compendium, was to develop questionnaires which were to structure the national reports in a way that would enable the editors of the study to identify the relevant issues for each member state. Already at this stage, several of the national contributors participated in the drafting of questionnaires. This has proven to be extremely useful. Thus, we were able to ensure as far as possible that the questions were understood in the same way by lawyers from so many different legal backgrounds – an aspect frequently given less attention than necessary when undertaking comparative research involving the transposition of European directives: the interaction between the European and national level is possibly one of the most fascinating fields of enquiry in a study such as this, but one can easily come to the wrong conclusions if the questionnaires used to gather relevant information are open to wide and differing national interpretation. This is something which, we hope, we were able to avoid.

Guided by these questionnaires, individual researchers or teams from each of the 27 member states drafted reports on the respective national transposition measures for each directive. As an added value, these reports also revealed how national laws were influenced by EU legislation and whether there have been difficulties or shortcomings of transposition.

On the basis of the national reports, the authors of this Compendium drafted, on the one hand, a very short characterisation of the general “transposition culture” of each member state (Part 1) and on the other hand, a detailed report on each directive, which intends to draft an EC-wide legal map after the transposition of the eight directives (Part 2). These reports are intended to chart the transposition across the 27 member states, and individual authors have determined how much depth was required in order to present a meaningful analysis of this process. A balance had to be struck between lengthy papers giving an exhaustive account on the transposition of each provision of every directive in all 27 member states, and a sketch providing only a very broad brush overview. The intention has been to draw out those aspects where the national transposition measures differ, rather than to list every provision that has been accurately transposed. The level of depth may therefore vary for each individual section, hopefully thereby having ensured that the Compendium provides a valuable picture of the state-of-play across the European Union, without obscuring the broader picture with too much detail.

These core parts of the Compendium are complemented by key conclusions with regard to common structures in the directives (Part 3) and particular recommendations to solve some of the problems highlighted in this study (Part 4). Of course, these conclusions and recommendations express just the personal views of the individual authors, although we do not shy away from encouraging deep reforms to these directives in the course of the ongoing review of the consumer acquis.

**6. *Editors and Authors.*** The research project was conducted in close co-operation of numerous contributors. It was co-ordinated by Hans Schulte-Nölke. This part of the study, the Compendium, was edited by him together with Christian Twigg-Flesner and Martin Ebers. The editors also served as the authors of individual parts of the study, partially together with other co-authors as indicated in the relevant parts.

**7. *Cut-off date.*** We originally intended that the Consumer Law Compendium should reflect the law in force on 1 October 2005. Thanks to the extended timetable referred to earlier, we were able to include some later developments. Therefore, we have also been able to incorporate many important changes in the law or other developments which took place up to

mid-2006, in some cases even until mid 2007.<sup>4</sup> It goes without saying that since then, the development of national consumer laws has continued. Thus, some information contained in this Compendium might soon be overtaken by new national developments (if this has not occurred already!). In particular the consolidated text of the Spanish Consumer Law (Real Decreto Legislativo 1/2007), which entered into force on 1 December 2007 could not be taken into account before the manuscript went to print. The overall picture of the enormous differences between the national laws in the fields regulated by the consumer directives is not very much changed by the amendments in individual member states. It is nevertheless envisaged to publish a second edition of this Compendium after some time, which then will reflect such amendments. In the meantime, the Database mentioned above will provide information on changes since the publication of the Compendium. It is envisaged that the Database will be updated quarterly, beginning from July 2008.

**8. *Caveat and Invitation for Comments.*** Overall, the Compendium contains about 6000 individual references to national laws. Almost all of these have been double-checked by at least one national consumer law expert, in many cases also by other interested experts, e.g. from consumer organisations or national ministries. We have taken all reasonable care to process the enormous bulk of material in more than 20 languages, but despite all diligence, the complexity of the exercise most certainly will also have led to some inaccuracies which are not just due to subsequent amendments of the national laws. The editors would like to point out that they have to take the academic responsibility for such shortcomings, not the national correspondents or proof-readers. We apologise for any of the inaccuracies readers may find. The editors and all contributors hope that the study will be acknowledged as a very serious attempt to draw a map of European consumer law in the field of the eight directives. We would gratefully welcome any, in particular critical, comment, which helps to improve it.

### **9. *Acknowledgments***

Finally, we would like to thank the many people who contributed and supported the project. First of all, we need to mention the national correspondents who invested an enormous amount of time into this project and who patiently answered dozens of questionnaires and questions without complaining. We especially have to thank those who took the responsibility to evaluate the Database the Compendium. The Database team and many other interested

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<sup>4</sup> As to Bulgarian and Romanian law, changes until February 2008 are considered in the Compendium.

people from enterprises, national authorities and consumer law organisations gave invaluable comments and recommendations. We are also very grateful to many members of the Acquis Group who, even though not formally involved in the project, gave advice and support. It has proven impossible to name everyone who supported this exercise, but the list of contributors and supporters enclosed may give an impression.

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We wish to reiterate that comments and suggestions are most welcome: [schulte-noelke@uni-bielefeld.de](mailto:schulte-noelke@uni-bielefeld.de).

Bielefeld, Hull and Barcelona, February 2008

Hans Schulte-Nölke, Christian Twigg-Flesner, Martin Ebers

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