

Tokushima International Consumer's Forum 2023
Joint session with the
Consumer Affairs Agency
Consumer Protection in the Digital Age
– Present and Future –

Current State of EU Consumer Protection Law in the Digital Age

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Profile

- Graduate of Undergraduate Studies, Faculty of Law, Athens University (LL.B.), completed the master's course of Postgraduate Studies, Faculty of Law, Athens University (LL.M.)
- Former member of the Athens Bar Association
- Completed the doctoral course of the Graduate School of Law, Waseda University (LL.D.)
- Visiting Professor of the Faculty of Law, University of Malaya (Kuala Lumpur, Malaysia), Faculty of Law, Thammasat University (Bangkok, Thailand), and the Faculty of Law, Suor Orsola Benincasa University (Naples, Italy)
- Member of the Board of Directors of the Japan Association of Consumer Law and the Kansai Consumers Support Organization, the Information and Communication Law Study Group of the Japanese Ministry of Internal Affairs and Communications, fellow of the New Future Vision Forum of the Japanese Consumer Affairs Agency

Profile

- Fellow of the European Law Institute (Austria), Member of the Scientific Board of Mediterranea International Centre for Human Rights Research (Italy); the Scientific Committee of the European Journal of Privacy Law and Technology (Italy); the International Editorial Committee of the Journal of Liberty and International Affairs (Republic of North Macedonia), and the Editorial Board of the Journal of Law, Market and Innovation (Italy)
- Major Book Publications:
 - ⇒ Studia Consumer Law (Yuhikaku Publishing, 2022) [Co-author]
 - ⇒ Unfair Commercial Practices and Private Law Theory: A Comparative Analysis with EU Law (Horitsubunkasha, 2020)
 - ⇒ Consumer Law: Present and Future (2nd edition, Horitsubunkasha, 2020) [Co-author]
 - ⇒ Outline and New Developments of Japanese Inheritance Law (Adam Marszarek, 2021) [Co-author]

Flow of Presentation

- 1 Digital fairness
- 2 Intersection of personal data protection law and consumer law
- 3 Personalization of transaction methods and consumer protection
- 4 Strengthening businesses' obligation to provide information
- 5 Obligations related to design
- 6 Ensuring effectiveness
- 7 International aspects

1 Digital fairness

Ongoing “fitness check”

- Checking whether the same level of consumer protection is ensured both online and offline
 - ⇒ Final version scheduled to be published in the second quarter of 2024
- The check will look at unfair commercial practices, obligation of businesses to provide information, unfair contract clauses, etc.

1 Digital fairness

Certain measures have already been realized

- Sale of Goods Directive and Digital Content and Services Directive largely unify remedies available to consumers in case of non-conformity to contract
 - + For goods with digital elements (smartphones, smart watches, smart homes, etc.), it has been clarified that non-conformity to contract is basically treated as non-conformity to the contract for sale of goods

1 Digital fairness

On the other hand, there are also digital-specific developments

Example (1): Amendment proposal to include software as “product” under product

+ Amendment proposal to include non-provision or insufficient provision of updates as “defect”

Example (2): AI-related legislative proposals

⇒ The Japan Business Federation has already expressed its opinion officially

2 Intersection of personal data protection law and consumer law

On one hand, strong protection of personal data (as a human right)

- Personal data is not a “commodity (product)”

On the other hand, personal data functioning as “fuel” in the digital society

- Especially as an essential element for digital businesses

⇒ Including the positioning of personal data as remuneration

3 Personalization of transaction methods and consumer protection

On one hand, it is possible to highly personalize commercial practices using personal data

- Personalized pricing
- Dark patterns etc.

On the other hand, there is discussion about the personalization of consumer protection (law) through the use of big data, etc.

- Protection (law) tailored to the circumstances of individual consumers

4 Strengthening businesses' obligation to provide information

On one hand, ensuring a high degree of transparency through the provision of information

Example: Obligation to provide information related to personalized pricing

+ Extension of subjects

Example: Online platforms' obligation to provide information related to users

On the other hand, necessity to maintain balance through paternalistic interventions

Examples: AI, targeted advertising, etc.

5 Obligations related to design

Imposition of certain obligations on online platforms regarding the design of online interfaces

- Obligation to design online interfaces in a way that enables business users to provide specific information

- + Obligation to design online interfaces so that illegal methods such as dark patterns cannot be used (or would be difficult to use)

- * A type of co-regulation by states and online platforms

6 Ensuring effectiveness

Enforcement measures against business operators which are unique to the digital society

- Removing or modifying content from online interfaces, blocking or restricting access, display of warning to consumers who access it

Conducting checks suitable to the digital society

- Sweeps (sets of checks)
 - ⇒ Searches targeting breaches of EU consumer law on websites, etc.

7 International aspects

Ensuring that a designated representative exists within the EU, in cases of foreign businesses

- Requirement of a “physical (face-to-face)” nature in a digital society

⇒ Will Japan be heading in the same direction in the future?

✘ Study Committee for Ensuring the Safety of Consumer Products (METI)
Final Report (June 2023)

Thank you very much
for your attention

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