

INTERNATIONAL LAW ASSOCIATION LISBON CONFERENCE (2022)

INTERNATIONAL PROTECTION OF CONSUMERS

Members of the Committee

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INTERIM REPORT (2020-2022)

I – Introduction- The ILA Committee on International Protection of Consumer; II – News of the International and supranational efforts; III- National Efforts on International Protection of Consumers. IV - Draft Interim Resolution: Suggestion of one “CONSUMER GLOBAL COMPACT IN THE DIGITAL ECONOMY” (English and French)

I – INTRODUCTION - THE ILA COMMITTEE ON INTERNATIONAL PROTECTION OF CONSUMERS:

Since its creation at the 2008 Biennial Conference in Rio de Janeiro¹ the Committee has addressed three issues: (1) the impact of the financial crisis on consumers and its international dimension; (2) consumer redress in cross-border transactions and the role of international law to protect consumers; (3) International Organizations dealing with consumer protection, special in e-commerce and in international tourism.

¹ See Discussion Report available at www.ila-hq.or/en/committees/index.cfm/cid/1030 .

a. Mandate and achievements: 2008-2022

The Committee of International Protection of Consumer was created in 2008 with the following mandate: *“to undertake studies on the international protection of consumers, with particular regard to e-commerce, tourism and consumer accidents. To this end, the Committee will compare various national legislations on consumer protection and the standards they offer for the protection of non-national and non-resident consumers on their territories, and will consider the possible extraterritorial reach of consumer legislation. The Committee’s primary aim is to look at how national legislation on the conflict of laws and jurisdiction, as well as international treaties, model laws and regional legislation on consumer issues) deal with the issue of consumer protection in a transboundary context. It will compare national and regional solutions to the issue by bringing together specialists to provide insight into national and regional experiences on consumer protection in a transboundary context, to assist in currently existing efforts in international law-making.”*

From the Congresses in Rio de Janeiro and Amsterdam and the online meetings with the ASADIP, Brasilcon, UFRGS and CEDEP, the Chair and first General-Rapporteur, Diego Fernandez Arroyo have organized a book.² The first normative contribution of the ILA’s Committee to the development of the international protection of consumers was in 2012. The International Law Association approves the ILA Resolution 4/2012, which suggests 5 principles that must guide international consumer law development.³

The so-called "Sofia Statement on the development of international principles on consumer protection" (ILA Resolution 4, 2012). is as follows:

“Consumer protection should be guided by the following general principles:

- 1. Consumers are the weaker party in situations of mass or standard form contracts, in particular concerning information and bargaining power.*
- 2. It is desirable to develop standards and to apply rules of private international law that entitle consumers to take advantage of the most favourable consumer protection.*
- 3. Regulation of consumer contracts should be effective and fair and ensure transparency.*
- 4. Responsible lending is incumbent on all those involved in consumer credit transactions, including credit providers, brokers and advisers.*
- 5. Consumer groups should participate actively in the development and regulation of consumer protection.”⁴*

² See MARQUES, Claudia Lima; ARROYO, D. F.; PEARSON, G.; RAMSAY, I. (Eds.) . The global financial crisis and the need for consumer regulation: new developments on internacional protection of consumers / La crisis financiera mundial y la necesidad de regulación de la protección de los consumidores: nuevos desarrollos en la protección internacional de los consumidores. Porto Alegre: ASADIP-UFRGS-Orquestra, 2012 (572pages).

³ See:. Conference Resolution Sofia 2012. Available in: <<http://www.ila-hq.org/en/committees/index.cfm/cid/1030>>. Access: 02 sept. 2012.

⁴ See <http://www.ila-hq.org/en/committees/index.cfm/cid/1030> .

For the 77th Conference of the International Law Association held in Johannesburg, South Africa, 7 to 11 August 2016, the Committee has organized a second book with a survey of the consumer protection laws and regulations worldwide.⁵ ,

Inspired by the Revision of the UN Guidelines for Consumer Protection in 2015 and desiring to contribute to the debate on the creation of fair and equitable principles for international consumer protection, the International Law Association has adopted the Johannesburg Recommendations recognising the emergence of the international dimension in consumer protection, the role of international law in helping to develop more equitable standards of consumer protection, and the need to take the consumer into account in international trade regulation.

The *ILA Resolution No. 1/2016*, the so called Johannesburg Guidelines and Recommendations (*Guidelines on the Best Practices on the Law Applicable to International Protection of Consumers*),⁶ is the second normative contribution of the Committee and it acknowledges that individuals/consumers are usually the weaker parties in consumer contracts , and in cross-border contracts in particular, most notably regarding the choice of applicable law and jurisdiction and concerned about the lack of universal models to protect consumers in cross-border contracts. The second book and the Recommendation have an international impact,⁷ especially considering the efforts to update national and regional laws, regulating international consumer contracts (in the EU, Mercosur, OEA, Japan, China, Korea, Brazil, Argentina, Panamá, Dominican Republic).

There are four recommendations approved at the ILA's Resolution 1/2016:

- RECOMMENDS acknowledgement of the protection of consumers as weaker parties as a principle in national and international transactions,*
- RECOMMENDS the adoption of special rules on applicable law and jurisdiction for cross-border consumer protection.*
- RECOMMENDS more international co-operation on consumer protection, especially in the field of international tourism.*
- RECOMMENDS that States consider best practices on international protection of consumers, and to that end also RECOMMENDS the use of the models set out in Guidelines on the Best Practices on the Law Applicable to International Protection of Consumers, with the aim of helping the development of fair and equitable legal standards for all consumers in the world, without discrimination."*

At the 78th Conference of the International Law Association held in Sydney, Australia, 2018, special attention was given to the Hague Conference's Tourism Project. From 2017 to 2018 the work of the Committee continues studying cross-border consumer e-commerce and the protection of tourists, especially as observer on the UNCTAD on the IGE on consumer protection and its working group on e-commerce and at the Hague Conference on Private International Law on the preparation of a global network to protect international tourists.

⁵ See MARQUES, Claudia Lima; WEI, Dan. (Ed.) . The future of international protection of consumers. Porto Alegre: PPGD/UFRGS, 2016. (320pages)

⁶ See ILA Resolution, <http://www.ila-hq.org/en/news/index.cfm/nid/08039ADC-FF64-4E58-8400C6F015DAD404>. See also the Report, <http://www.ila-hq.org/en/committees/draft-committee-reports-johannesburg-2016.cfm> .

⁷ See the book MARQUES, Claudia Lima; DAN, Wei. Consumer Law and Socioeconomic Development: National and International Dimensions, Springer: Heidelberg, 2017.

From 2019 to 2020 the Committee has maintained these two subjects and studied the opportunity to an interim Resolution, but due the COVID-19 outbreak in China and Brazil, it was not coordinated by the University of Macau and UFRGS-Porto Alegre, but thanks to the University of Minho, Portugal and the efforts of Prof. Dr. Anabela Gonçalves the online meeting in 2020 was a great success. At the 79th Conference of the International Law Association held in Kyoto, Japan, the Committee decided not to present the Resolution and asked to postpone the end of the Committee to the next Biannual Conference in 2022, since the COVID-19 Pandemic Stroke had a negative impact on the work of the Committee.

In 2021, the work of the Committee could be rebuilt, through zoom meetings, thanks to the Federal University of Rio Grande do Sul, an Interim Resolution could be prepared in e-commerce. The initial idea of a ‘model law’ was substituted for another kind of soft law - **a voluntary set of standards inspired by the UN global Compact: ILA’s CONSUMER GLOBAL COMPACT IN THE DIGITAL ECONOMY’. The aim is to engage Big Techs and E-commerce Global Players in this voluntary set of standards in consumer and data protection** (see nr. V on this report).

For our second line of work, the protection of international tourists - we are observers and consulting experts following the advances at the HCCH Guide on ODR for international tourists and the future UNWTO International Code of Tourist Protection. However, only one of these international texts are ready (see ‘b’ and Part. II of this report), so we have asked the Director of Studies and ILA’s Executive Council to renew our mandate for another two years, to present a final Resolution on protection of international tourists in 2024. In Lisbon, our Committee will hold a **Working session** (see provisional program annexed).

In July 2022, the Committee will be an observer at the IGE on Consumer Protection Law and Policy at UNCTAD, in Geneve. The Committee has answered the questionnaire to prepare a report on financial consumer protection, including **financial education and literacy** as background documentation for the sixth session of IGE on Consumer Protection Law and Policy at UNCTAD. The idea was to provide a global overview of how different States represented at the ILA’s Committee have ensured consumer protection rights in the provision of financial services frameworks and also promoting financial consumer education.

b. COVID-19’s Impact and the Protection of International Tourists at the Hague Conference on Private International Law: Towards 2024

On March 2020, in a online meeting, the Committee has decided – under the suggestion of Prof. Thierry Bourgoignie and Prof. Wei Dan – to focus the future work of the Committee on the efforts to protect consumer at the regional integration processes (EU, ASEAN, MERCOSUR, North America/Canada/Mexico, Gulf region, CARICOM, EURASIA, several regional agreements in Africa, etc.), and to suggest a “Model Law on International Protection of Consumers” (in Private International Law or in International Civil Procedure).

Unfortunately, as many countries, especially Brazil and China, were heavily affected by Covid-19 and all universities were completely or partial closed, our work was not successful. It is to note that unfortunately nobody in our committee managed to finish the elaboration of such ‘model law’. Because of the existing difficulties, we opted to

request from the Director of Studies the opportunity to extend our committee for two more years to allow us to finish our mandate and decide to work in a more ‘practical’ soft law.

In 2021, on the invitation of our Member Dr. Yu Ying, the Chair Prof. Claudia Lima Marques, has presented a first idea of this Statement at the UN Trade Forum 2021- Towards a Green and Inclusive recovery, UNCTAD, Geneva 15.06.2021 (Session II - Towards a more inclusive world: What can trade do?) and it was well received. Similar statement was accepted by the Technical Committee nr. 7 in MERCOSUR in its preparation for a '*Pacto empresarial Mercosur para la protección del consumidor en el entorno digital*'.⁸ Also, the consumer movements show enthusiasm about the statement, especially the Directors of *Consumers International* and BRASILCON (Brazilian Institute of Consumer Law and Police). So, the Chair and Rapporteur have prepared a first draft resolution on e-commerce to be discussed in November and December with the Members of the Committee. The Text is a soft law statement for big players of the digital economy and international data driven platforms worldwide to voluntarily comply with national and supranational consumer and data protection laws and it was called, ***ILA's CONSUMER GLOBAL COMPACT IN THE DIGITAL ECONOMY.***'

We believe such Statement – with some modifications and perhaps expansions - can be used as an interim contribution of our Committee of the International Law Association in the form of a Resolution, to enhance the culture of fairness and cooperation toward digital and global consumers. After two online meetings and e-mails exchanges all the Members agreed with the final text, presented in this report. We thank the inputs from all our members. All Committee Members have helped to develop this Draft Resolution, after a basis text made by the Chair Claudia Lima Marques, but we want to highlight the engaged help by the Rapporteur Wei Dan, and the following members: Thierry Bourgoignie, Gail Pearson, Yu Ying, Anabela Gonçalves, Ezequiel Mendieta and Rui Dias. We also want to thank the PhD Candidate Maria Luiza Targa (UFRGS, Porto Alegre, Brazil) for her help at the web meetings in November 2021 and the French translation in December 2021. This is our contribution to enhance the consumer protection in global e-commerce.

The Committee has also taken part in 2021,2022 as delegate at the Hague Conference Expert Meetings on the HCCH Guide on ODR for international tourists (so called ‘Tourism project’), at the UNCTAD, in many Working Groups and panels. At the UNCTAD we take part online at the Ad hoc Meeting on Consumer Product Safety and on E-Commerce.

In 2022, after the Lisbon congress we will focus our efforts to the consumer protection and tourism (HCCH ODR Tourism project), because the growing importance of the topic throughout the COVID-19 worldwide pandemic and therefore the relevance to set a base to established a worldwide network of authorities on consumer protection

⁸ See MARQUES, C. L.. Por um pacto empresarial do Mercosul para a proteção do consumidor no meio digital: origens e finalidades. In: Claudia Lima Marques; Luciane Klein Vieira; Sergio Sebastián Barocelli. (Org.). *Los 30 años del MERCOSUR: avances, retrocesos y desafíos en materia de protección al consumidor*. 1ed.Ciudad Autónoma de Buenos Air: IJ Editores, 2021, v. 1, p. 293-318. Accessible in [Por um pacto empresarial do MERCOSUL para a proteção do consumidor no meio digital: Origens e finalidades \(ijeditores.com\)](https://www.ijeditores.com/por-um-pacto-empresarial-do-mercossul-para-a-protecao-do-consumidor-no-meio-digital-origens-e-finalidades-ijeditores.com) (10.02.22)

during this international sanitary crisis (see also UNCTAD's new project on international cross-border enforcement, part. III of this report).

The Committee wants to discuss during the Lisbon Biannual Conference the impact of the COVID-19 on the protection of international tourists and present it at the UNCTAD'S IGE on consumer protection or organizing an online talk on the topic as a side-event. For 2024, the idea of the Committee is to prepare a final report focus on the protection of international tourists and e-tourism as well ODR fit for the redress of international tourists in consumer issues.

The ILA's Committee on International Protection of Consumers has described the evolution of the HCCH proposal⁹ at the side-event of the UNCTAD as followed: *"The Brazilian Proposal was submitted to the Council on General Affairs and Policy (Council) in 2013, together with an explanatory memorandum detailing the rationale for such an instrument. In 2013, with the support of member states such as Portugal and China (and most of South American countries) the theme was included in the Conference Agenda. The importance of such inclusion lies on the fact that for the first time in The Hague Conference on Private International Law (HCCH) a theme, proposed by a developing country, was considered to be officially discussed and, therefore included, in the Conference Agenda. In 2015, the Council decided that the Permanent Bureau (PB) should conduct a study on the desirability and feasibility of further work in the area of co-operation in respect of protection of tourists and visitors abroad, in view of compatibility of the topic with the mandate of the HCCH as well as the work conducted in other for a, such as the World Tourism Organization (UNWTO). The Hague Conference expertise in building global networks organized by Central Authorities enhances the accessibility to foreign tourists to the legal assistance and also standard formularies in various languages to help the complains. The Central Authorities are a very good tools to organize networks and to assure mutual assistance, urgent measures and legal information, also to develop formulary in various languages and also to beware and register the complains and the data about it, for purposes of evidence in future complains at the State of origin of the tourist, so it is an instrument that is needed to protect foreign tourists. The report delivered by the expert consultant, Professor Emmanuel Guinchard after a deep research, made with the help of States Members and Non-Members of the Hague Conference concludes that "that work on the Tourism Project is desirable; is feasible; and that the work of the HCCH and UNWTO neither overlaps nor is incompatible. To the contrary, the Final Report concludes that the work by the two organizations in this area would be complementary", member states have manifested the need of an extension of time for the analysis of such report...".¹⁰*

In 2018, the Council ordered the Permanent Bureau to prepare the establishment of an Experts' Group. This Experts' Group met from August 28th to August 31st, of 2018. Experts from sixteen jurisdictions, together with the Consultant and members of the Permanent Bureau, 'considered a wide range of issues pertinent to the Tourism Project'. The second Meeting of the Expert Group was in September 2019 (see Aide Memoire of the Meeting of the Experts' Group on the Protection of Tourists) and in 2020 there was a

⁹ See also LIMA MARQUES, C. (2014). The Brazilian "Draft Convention on Co-operation in Respect of Tourists and Visitors Abroad" at the Hague Conference and the UN World Tourism Organization's Draft Convention. In Moreno Rodriguez, J. & Lima Marques, C. *Los servicios en el Derecho Internacional Privado – Jornadas de la ASADIP 2014*, Porto Alegre: ASADIP, pp. 823-848.

¹⁰ Source: http://unctad.org/meetings/en/Contribution/cicplp3rd_c_brasilcon-ila_sd_en1.pdf.

third Expert Group in October 2020. The HCCH Guide was prepared in 2021 and it will be approved in 2022. This subject will be our focus in 2022 and 2023 to prepare a final Resolution.

II - NEWS OF THE INTERNATIONAL AND SUPRANATIONAL EFFORTS

UNCTAD – UNCTAD’s Digital Trading Infrastructure and Online Dispute Resolution for Consumers project (DODR project) - A very important text was published at the UNCTAD Research Papers (UNCTAD/SER.RP/2021/15) by Dr. Yu Ying, Member of this Committee (CHUNG, Alex; YU, Ying. Consumer trust in the digital economy: The case for online dispute resolution, in *UNCTAD Research Papers* 72, accessible in https://unctad.org/system/files/official-document/ser-rp-2021d15_en.pdf). In December 2021 UNCTAD’s Digital Trading Infrastructure and Online Dispute Resolution for Consumers project (DODR project) launches research on consumer trust in the digital economy. This research is conducted in the framework of UNCTAD’s technical cooperation project on [“Delivering digital trading infrastructure and online dispute resolution for consumers as means to improve international trade and electronic commerce.”](#) The DODR project is targeting Indonesia and Thailand, with the support of China Silk Road Group and implemented by the Competition and Consumer Policies Branch. Many countries worldwide are encountering a common set of challenges and opportunities in the digital economy. Global e-commerce sales have been soaring over the past decade, [nearing \\$5 trillion in 2021 and projected to reach around \\$6.4 trillion by 2024.](#) The opportunities related to an unprecedented surge in global ecommerce contrasts with the challenges facing fragile consumer trust that lie beneath the positive economic outlook, which has been exposed by the pandemic as [highlighted by UNCTAD back in April 2020.](#) Meanwhile, cross-border business-to-consumer trade and micro, small and medium-sized enterprises still hold vast potentials that remain to be unlocked. To fully seize these opportunities and better protect consumers, these challenges must be addressed. One crucial step in this process is to identify how consumer trust can be enhanced, and how dispute resolution can help. The text can be resumed as follows: “As e-commerce expansion surges, consumer trust remains fragile. This mismatch, greatly fueled by the COVID-19 pandemic, reveals disparities between the rapid pace with which consumer activities are being migrated online and inadequate consumer protection. Dispute resolution mechanism has been proposed by consumer experts as an essential tool that helps to foster trust. The notion of trust is unpacked to theorize why it matters in business transaction, and how a third-party can serve as an institutional mechanism to help transacting parties overcome distrust and settle dispute. To examine how the theories work in practice, selected studies are reviewed to determine whether the presence of consumer dispute resolution promotes trust and whether its absence leads to business costs. This includes in-house business online dispute resolution such as customer support and third-party e-payment systems. The findings confirm that effective online dispute resolution processes can increase trust along with consumer loyalty and repurchasing intentions, as well as prevent customer churn and dissatisfaction. The trust-enabling benefits of online dispute resolution are yet to be fully realized, especially for cross-border business-to-consumer e-commerce. Wider awareness and implementation are

needed, but these global challenges require timely collaborations by the international community.” The key message and recommendations of the research paper are: “Consumer trust is essential to all economies. For any healthy digital economy to grow sustainably, it is vital to protect consumers and boost their confidence when e-commerce and cross-border trade are booming. To avoid complacency, which can lead to consumer distrust and costs to businesses, the time is ripe to act. A useful tool for fostering consumer trust in the digital economy is effective online dispute resolution. Recommendations -1. Recognize, promote, and educate the importance of consumer trust and dispute resolution in facilitating international trade and cross-border e-commerce. 2. Encourage businesses to provide access to or implement effective online dispute resolution for consumers, especially in developing countries. 3. Participate in international dialogues to exchange ideas on overcoming consumer trust challenges and share best practices on approaches to consumer dispute resolution.” (Yu Ying)

UNCTAD eCommerce Working Group is researching cross-border enforcement of consumer law- The UNCTAD eCommerce Working Group Sub-group 3: Cross-Border Co-operation create a sub-working group on cross border enforcement and together with the University of Reading, UK, has a new project entitled: “International policy on cross-border enforcement of consumer Law at the United Nations” The project will “carry out research for a report that feeds into the work currently underway at UNCTAD on the cross-border enforcement of consumer law. The report will be assembled thanks to the expertise of a number of collaborators with specific regional and institutional knowledge of the main regions that needs to be considered, in the creation of an international system of cross-border enforcement. This report responds to the needs identified and agreed by UNCTAD (who have agreed the outline of this project) and fills gaps in the knowledge they are able to gather. The report will make recommendations as to where international work needs to focus to progress international cooperation of enforcers.” The Project team leader is Prof. Dr. Christine Riefa (University of Reading, UK) together with the IFF, Germany. (**Christoph Benicke and Wei Dan**)

UNCTAD - RECOMMENDATION ON PREVENTING CROSS-BORDER DISTRIBUTION OF KNOWN UNSAFE CONSUMER PRODUCTS - In 2020, UNCTAD adopted the Recommendation on preventing cross-border distribution of known unsafe consumer products, which call for more exchange of data and information on national policies among Governments and for awareness-raising initiatives among businesses and consumers on the risks to consumers’ physical safety posed by unsafe products, especially when engaging in cross-border online transactions.¹¹ As the website of the E-week states: “As business-to-consumer e-commerce continues to bloom, with 27 per cent of the world’s population aged 15 years and older shopping online, so do the risks to consumers’ health and safety caused by unsafe products being sold online. This happens in the context of rising concerns on the availability of information and data regarding products and services sold cross-border. UNCTAD member States recognize that appropriate policies that promote trade in safe consumer products can improve consumer confidence and provide more favourable conditions for sustainable economic development. Policymakers are pursuing policies that guarantee consumers’ rights to be informed and to safe products and to be protected against negative consequences

¹¹ See [United Nations Review Conference: Preventing Cross-Border Distribution of Known Unsafe Consumer Products \(unctad.org\)](https://unctad.org/en/publications-and-statistics/publication/preventing-cross-border-distribution-of-known-unsafe-consumer-products/Pages/default.aspx) .

involving unsafe products; at the same time those policies should not create unnecessary obstacles to trade or be more trade restrictive than necessary. In this pursuit, international cooperation becomes instrumental in maximizing consumer welfare while reducing barriers to trade.”¹² In 2021, Consumers International has released their Guideline for Online Product Safety¹³ presenting global recommendations for action from Governments and businesses to ensure the rights and needs of consumers are built into the design of e-commerce regulations and practices.¹⁴ (Claudia Lima Marques and Wei Dan)

UNWTO – THE APPROVAL OF THE ICPT-INTERNATIONAL CODE OF TOURIST PROTECTION – In November 2021, the World Tourism Organization (UNWTO Madrid) approved the International Code of Tourist Protection-ICPT.¹⁵ The official text is not yet accessible (only for two Chapters) but as the Committee was accepted as an observer and the Chair, Prof. Dr. h. c. Claudia Lima Marques (Federal University of Rio Grande do Sul-UFRGS, Porto Alegre, Brazil) was invited as independent expert we have had access to the full text. With **restoring confidence a key priority** for the sector, the International Code for the Protection of Tourists advanced by UNWTO with the support of almost 100 Member States so far, will make the support available to tourists affected by emergency situations clearer and more consistent globally.¹⁶ International tourist arrivals (overnight visitors) in the first seven months of 2021 were 40 % below the levels of 2020, and still 80 % down when compared to the same period of pre-pandemic year 2019.¹⁷ The idea is to restore consumer and travel confidence after the COVID crises. The subject will be studied in 2022 and 2023 by the Committee to a final Resolution.

HCCH-TOURISTS AND VISITORS (ODR) PROJECT – From 5 to 9 October 2020, the Experts’ Group on the Tourists and Visitors (ODR) Project (EG) met via videoconference and the ILA’s Committee was present as observer. As the BP states: “This third meeting of the EG was attended by 35 experts, representing 14 Member States, one Regional Economic Integration Organisation and four Observers, as well as members of the Permanent Bureau (PB) of the HCCH. At its 2020 meeting, the Council on General Affairs and Policy (CGAP) invited the convening of this third meeting of the EG with a focus on determining the necessity, desirability and feasibility of a soft law instrument on matters relating to online dispute resolution. The EG was asked to report to CGAP at its 2021 meeting. The Expert Group concluded that the development of a “Guide” may provide useful assistance to tourists and visitors in pursuing claims. The Guide would explain how existing HCCH Conventions and Principles may be relevant to the resolution of claims by international tourists and visitors (including general references to other relevant instruments); and list and describe, with no value judgment, ODR platforms that may be used by international tourists and visitors, by providing factual information, based on specific features identified by the EG, that could assist tourists and visitors in assessing

¹² See UNCTAD, <https://unctadeweek2022.pathable.co/meetings/virtual/2t9iKtai2YqErZvuZ>.

¹³ See Consumers International - [Guidelines for Online Product Safety](#).

¹⁴ See UNCTAD, [Trust in cross-border e-commerce: the case for consumer product safety | UNCTAD](#).

¹⁵ See UNWTO News in <https://www.unwto.org/event/general-assembly-twenty-fourth-session>.

¹⁶ See UNWTO News in <https://www.unwto.org/news/new-international-code-to-provide-greater-legal-protection-for-tourists>.

¹⁷ So UNWTO Barometer July 2021, accessible https://webunwto.s3.eu-west-1.amazonaws.com/s3fs-public/2021-10/UNWTO_Barom21_05_September_excerpt.pdf

which platform may suit their needs.”¹⁸ The HCCH Tourists ODR Guide is now in elaboration and the ILA’s committee has examined the first version. This subject will be research in 2022 and 2023.

CONSUMER VULNERABILITY AND INTERNATIONAL STANDARDS BY ISO

– ‘Consumer vulnerability’ is a ‘condition in which a consumer is at greater risk of mis selling, exploitation or being put at a disadvantage in terms of accessing or using a service, or in seeking redress’ (BS 18477), so new international standard will seek to give more guidance for businesses on how these vulnerabilities and risks factors may affect individuals in their interactions with businesses. As Julie Hunter states in: *“2016 and 2017 research by the Norwegian Consumer Council (NCC) uncovered serious flaws in internet connected products aimed at children – including dolls and smartwatches – which breached basic consumer rights, privacy and security. Tests showed how strangers could control these devices, allowing them to access the child’s location and personal details, listen in on conversations and even contact the children directly, without the parents’ knowledge. ANEC and BEUC19 (the umbrella group for national, independent consumer organisations in Europe) joined forces with the NCC in its subsequent #ToyFail campaign to call on better protection for consumers in the digital world. In response to such concerns, BSI’s CPIN proposed a new international standard through ISO COPOLCO20 on Privacy by Design, which was approved.”* (HUNTER, Julie. The role of voluntary standards in improving outcomes for consumers in vulnerable situations in RIEFA, Christine; SAINTIER, Séverine (Eds.). *Vulnerable Consumers and the Law - Consumer Protection and Access to Justice*. New York, Routledge, 2021, p. 138)... *“in 2015,31 BSI’s CPIN recommended that BSI support a new work item proposal for an international standard to be developed by the International Organization for Standardization (ISO). This was accepted and a project committee of experts (ISO PC 311) was created in February 2018 with representatives from industry, government and consumer organisations, including BSI’s CPIN. This working group of experts from around the world, will develop the content of the new ISO 22458: Inclusive service – Identifying and responding to consumers in vulnerable situations based on BS 18477. This new ISO 22458 is likely to be published in 2021.”*(HUNTER, op. cit. p. 147) The “ISO 22458 Consumer vulnerability – Requirements and guidelines for the design and delivery of inclusive service” is not yet developed, but the ILA’s Committee together with the Consumers International is following its development. See its current development grade in [ISO - ISO/FDIS 22458 - Consumer vulnerability – Requirements and guidelines for the design and delivery of inclusive service](#). This standard specifies requirements and gives guidance for organizations on how to provide an inclusive service at all stages of service delivery, helping them to identify and support consumers in vulnerable situations. This new ISO Standard is only for ‘services’ (essential services, services in general and services-related products, ‘intangible product, linked to service provision, delivered by a service organization’) and defines consumer (3.3) as ‘individual member of the general public who is the end user of services or service-related products’. Defines also consumer vulnerability (3.5) as “state in which an individual can be placed at risk of harm, during their interaction with a service provider due to the presence of personal, situational and market environment factors” and vulnerable situation (3.12)

¹⁸ Accessible in <https://assets.hcch.net/docs/588a7d85-37e8-4fe5-bfa8-8e914b6f9ecc.pdf> (14.01.2022).

“temporary or permanent circumstance which places a *consumer* (see 3.3) at risk of harm or disadvantage, if an organization does not act with appropriate levels of care.”¹⁹ (Thierry Bourgoignie and Claudia Lima Marques)

EU – NEW CONSUMER AGENDA- STRENGTHENING CONSUMER RESILIENCE FOR SUSTAINABLE RECOVERY - In November 2020, the European Commission adopted the New Consumer Agenda (COM/2020/696 final), an updated overall strategic framework of the EU consumer policy, aiming to: “tackle the new challenges to consumer rights and opportunities for consumer empowerment brought about by the green and digital transitions, the COVID pandemic and the plans for post-COVID recovery; protect vulnerable consumers more effectively in the new economic realities of the COVID-19 crisis and its likely aftermath; and address the growing importance of international cooperation and effective enforcement in ensuring consumer rights in the globalisation era.”²⁰ The new Consumer Agenda covers five key priority areas: (1)The green transition; (2)The digital transformation; (3)Redress and enforcement of consumer rights; (4)Specific needs of certain consumer groups; and (5)International cooperation. And it “presents a vision for EU consumer policy from 2020 to 2025, building on the 2012 Consumer Agenda (which expires in 2020) and the 2018 New Deal for Consumers. It also aims to address consumers’ immediate needs in the face of the ongoing COVID-19 pandemic and to increase their resilience. The pandemic has raised significant challenges affecting the daily lives of consumers, in particular in relation to the availability and accessibility of products and services, as well as travel within, and to and from the EU.”²¹ As the new consumer agenda highlights: “The crisis has affected many areas of consumers’ lives and it underlined the critical importance of a high level of consumer protection and close cooperation among authorities in the EU. At the same time, it has also brought to light certain gaps in the EU’s consumer protection framework. EU consumers rightly expect transport undertakings and tour operators to respect their right to a full refund of pre-payments. However, consumers are facing significant problems in enforcing this right due to the liquidity problems of the sector and the almost halt of passenger transport during the pandemic. In response, the Commission and Member States have taken action to ensure that consumers’ rights are protected, promoting also practical solutions, in full compliance with the applicable rules. The experience from the pandemic and from previous events, such as the bankruptcy of Thomas Cook in 2019, calls for a deeper analysis into whether the current regulatory framework for package travel, including as regards insolvency protection, is still fully up to the task of ensuring robust and comprehensive consumer protection at all times, taking into account also developments in the field of passenger rights .Another area of concern that has come to the fore during the pandemic is the surge in consumer scams, deceptive marketing techniques and fraud in online shopping, to which an increasing number of consumers have fallen and continue to fall victim.” So 3 actions are planned: “Action 1: By 2022, the Commission plans to analyse the extent to which the Package Travel Directive is still adequate in the light of recent crises, building on the 2021 report on its application. ·Action 2: By 2022, the Commission plans to engage in foresight to explore the longer-term impact of COVID-19 on the consumption patterns of people in

¹⁹ See [ISO/DIS 22458\(en\), Consumer vulnerability – Requirements and guidelines for the design and delivery of inclusive service](#)

²⁰ See https://ec.europa.eu/info/policies/consumers/consumer-protection-policy/consumer-strategy_en

²¹ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0696&qid=1605887353618>

the EU as a basis for future policy initiatives. ·Action 3: The Commission will support and facilitate cooperation between the Consumer Protection Cooperation network and other networks and stakeholders to tackle consumer scams, unfair marketing practices and fraud.” (Claudia Lima Marques)

EU – PROPOSAL OF A DIGITAL MARKETS ACT (2020) - In December 2020, the European Commission proposed a new piece of legislation, the Digital Markets Act, to better govern the ‘Gatekeepers’, predominantly US internet giants operating in Europe (Google, Meta, Apple, and Amazon). The Digital Markets Act (DMA) is a legislative proposal of the European Commission that intends to ensure a higher degree of competition in the European Digital Markets, by preventing large companies from abusing their market power and by allowing new players to enter the market. It is an ambitious reform of the digital space, a comprehensive set of new rules for all digital services, including social media, online marketplaces, and other online platforms that operate in the European Union: the Digital Services Act and the Digital Markets Act. (Claudia Lima Marques)

EU – FIRST IMPACT OF THE NEW DEAL FOR CONSUMERS (2018-2021)- Since December 2021, the European Commission has adopted four Notices providing guidance on the application of the Unfair Commercial Practices, the Consumer Rights, the Price Indication and the Unfair Contract Terms Directives. The EU website explain: “the application of EU consumer law to new developments in key areas, in particular concerning the digital and green transitions. For the digital area, the Commission provided additional legal interpretation in the guidance on the Unfair Commercial Practices Directive and on the Consumer Rights Directive concerning practices in digital markets, such as data-driven personalisation, dark patterns, influencer marketing, consumer reviews, as well as obligations of online platforms and marketplaces. Regarding the green transition, the Commission updated existing sections on environmental claims and planned obsolescence in the guidance on the Unfair Commercial Practices Directive.” The first notice (Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market -C/2021/9320) showing the growing complexity of Eu consumer protection analyses the interplay with Consumer Rights Directive; with the Unfair Contract Terms Directive; with the Price Indication Directive, with the Misleading and Comparative Advertising Directive; with the Services Directive; with the e-Commerce Directive, with the Audiovisual Media Services Directive, with the General Data Protection Regulation and the e-Privacy Directive; with Articles 101-102 TFEU (EU competition rules); with the EU Charter of fundamental rights, with Articles 34-36 TFEU and with the Platform-to-Business Regulation²²; and an impact assessment on Proposal for a Directive introducing targeted amendments to EU consumer law Directives and Proposal for a Directive amending and replacing Directive 2009/22/EC on injunctions for the protection of consumer interests (New Deal for Consumers). The EU’s initiative on impact assessment is welcome: “The initiative aims at further consolidating a healthy consumer environment, which supports economic growth as consumer expenditure

accounts for 56 % of EU GDP. The envisaged measures should, on the demand side, reduce consumer detriment, support trust and empower consumers to play their part in driving the markets. On the supply side, they aim to ensure fair competition and legal certainty for companies. The specific objectives are to: (1) improve compliance with EU consumer law and (2) modernise consumer protection rules and eliminate unnecessary costs for traders. This will contribute to the general objectives of: (1) ensuring a high level of consumer protection and (2) smooth functioning of the internal market, for the benefit of both consumers and traders.”²³ **(Claudia Lima Marques)**

EU- REPRESENTATIVE ACTIONS FOR THE PROTECTION OF THE COLLECTIVE INTERESTS OF CONSUMERS- The long-awaited Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers, repealing Directive 2009/22/EC, was approved in November 2020 (*OJ L 409, 4.12.2020, p. 1–27*). The Member States will have until 25 December 2022 to transpose the Directive into their national legal orders and until 25 June 2023 to apply national provisions transposing the Directive. The directive introduces, for the first time, representative actions for injunctions and redress in all Member States of the European Union. It is to note that the Directive rejects not only the North American nomenclature, class action, referring at all times to ‘representative action’, as also the USA class action model in which it is a leading lawyer or leading injured party who brings the action and form a ‘class’ of affected consumers. It is also to note the wide scope of application, explained in nr. 13 as such: “Since consumers now operate in a wider and increasingly digitalised marketplace, achieving a high level of consumer protection requires that areas such as data protection, financial services, travel and tourism, energy, and telecommunications be covered by the Directive, in addition to general consumer law. In particular, as there is increased consumer demand for financial and investment services, it is pertinent to improve the enforcement of consumer law in those areas. The consumer market has also evolved in the area of digital services, and there is an increased need for more efficient enforcement of consumer law, including as regards data protection.”²⁴ According to Article 2, the Directive applies to domestic and cross-border infringements, as well as infringements that ceased before the representative action was brought or concluded. **(Claudia Lima Marques)**

EU – COMING IN FORCE OF OMNIBUS DIRECTIVE AND DIGITAL DIRECTIVES - The requirements set out in the Omnibus Directive (Enforcement and Modernisation Directive 2019/2161) must come into force in May 2022. The so called ‘Omnibus Directive’ aims to strengthen consumer rights through enhanced enforcement measures and increased transparency requirements. It is interesting to note that this Directive will apply to those engaged in online business-to-consumer transactions as well as companies offering digital services to consumers where payment by the consumers is in the form of personal data rather than money. The Omnibus Directive increases Transparency obligations on traders: 1. “traders must provide clear information to consumers on the criteria used by traders to rank products in online searches. Traders must also disclose paid advertising and whether specific payments have been made to achieve a higher ranking in the search results.” 2. “submitting or commissioning fake reviews or endorsements are prohibited, and traders must justify the reasonable and proportionate steps they have taken to ensure that reviews on their website are genuine,

²³ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1525359541381&uri=CELEX:52018SC0098>

²⁴ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020L1828>

for example by limiting the ability to post a review to verified purchasers only.” 3. “traders must inform consumers whenever a price presented to them has been personalised as a result of automated decision-making and consumer profiles.” And 4. “online marketplaces are obliged under the Directive to inform consumers whether the item they are purchasing is from a private individual and that such transactions do not benefit from the EU consumer protection regime.” Recital 30 of the Omnibus Directive explain the interplay between this Directive and the digital Directives: “The definitions of digital content and digital services in Directive 2011/83/EU should be aligned to those in Directive (EU) 2019/770 of the European Parliament and of the Council ⁽¹⁵⁾. Digital content covered by Directive (EU) 2019/770 covers a single act of supply, a series of individual acts of supply, or continuous supply over a period of time. The element of continuous supply should not necessarily require a long-term supply. Cases such as web-streaming of video clips should be considered continuous supply over a period of time, regardless of the actual duration of the audiovisual file. It may therefore be difficult to distinguish between certain types of digital content and digital services, since both can involve continuous supply by the trader over the duration of the contract. Examples of digital services are video and audio sharing services and other file hosting, word processing or games offered in the cloud, cloud storage, webmail, social media and cloud applications. The continuous involvement of the service provider justifies the application of the rules on the right of withdrawal provided for in Directive 2011/83/EU that effectively allow the consumer to test the service and decide, during the 14-day period from the conclusion of the contract, whether to keep it or not. Many contracts for the supply of digital content which is not supplied on a tangible medium are characterised by a single act of supply to the consumer of a specific piece or pieces of digital content, such as specific music or video files. Contracts for the supply of digital content which is not supplied on a tangible medium remain subject to the exception from the right of withdrawal set out in point (m) of the first paragraph of Article 16 of Directive 2011/83/EU, which provides that the consumer loses the right of withdrawal when the performance of the contract is started, such as download or streaming of the content, subject to the consumer’s prior express consent to begin the performance during the right of withdrawal period and acknowledgement that he has thereby lost his right of withdrawal. Where there is doubt as to whether the contract is a service contract or a contract for the supply of digital content which is not supplied on a tangible medium, the rules on right of withdrawal for services should apply.” The Directives on Digital Content (2019/770) and the Directive on Sales (2019/771) are complementary. The Sale of Goods Directive mentions that it is applicable “to sales contracts between a consumer and a seller”, but it should apply to digital content or digital services which are incorporated in or interconnected with goods (smart products), and are provided with the goods under the sales contract, irrespective of whether such digital content or digital service is supplied by the seller or by a third party. Under this Directive the sales contract covered the digital world. (Claudia Lima Marques)

EU – NEW GUIDELINES ABOUT THE PAYMENT SERVICES DIRECTIVE 2 REVISED– The 2022 Guidelines on the limited network exclusion under the revised Payment Services Directive (PSD2) “aim at clarifying specific aspects of its application, including on how a network of service providers or a range of goods and services should be assessed in order to qualify as ‘limited’, the use of payment instruments within limited networks, the provision of excluded services by regulated financial institutions and the

submission of notification to competent authorities (CAs).”²⁵ Also in 2022, the European Data Protection Board has issued a ‘Final EDPB Guidelines on the interplay of the Second Payment Services Directive and the GDPR’ with consensual rules with the payment sector about data minimization and processing of special categories of personal data (SCPD).²⁶ The Payment Services Directive PSD2 has enhanced consumer protection in the pan-European area. As the Website informs: “In case of an unauthorised transaction, the payment service user must be refunded immediately. The payment service user is not liable if it was not possible for him/her to be aware of a loss that resulted from theft or misappropriation of the payment instrument (e.g. data breaches, hacking attacks, copied payment cards). In other cases of lost or stolen payment instruments (e.g. a lost wallet), the payment service user can be held liable for a maximum of €50, provided he/she fulfilled the obligation to notify the payment service provider and did not act in a grossly negligent or fraudulent manner. Payment users have an eight-week unconditional refund right for direct debits in euro.” (**Claudia Lima Marques**)

EU- NEW CIRCULAR ECONOMY ACTION PLAN AND EUROPEAN GREEN DEAL – In 2020, the European Commission adopted the new circular economy action plan, known as CEAP, one of the main building blocks of the European Green Deal, Europe’s new agenda for sustainable growth (COM/2020/98 final). The EU has conceived this plan as a ‘new Circular Economy Action Plan For a cleaner and more competitive Europe’. The EU’s website informs that “transition to a circular economy will reduce pressure on natural resources and will create sustainable growth and jobs. It is also a prerequisite to achieve the EU’s 2050 climate neutrality target and to halt biodiversity loss. The new action plan announces initiatives along the entire life cycle of products. It targets how products are designed, promotes circular economy processes, encourages sustainable consumption, and aims to ensure that waste is prevented, and the resources used are kept in the EU economy for as long as possible.”²⁷ (**Claudia Lima Marques**)

EU – PROPOSAL ON EMPOWERING CONSUMERS FOR THE GREEN TRANSITION -In 2022, the EU has published a Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information (COM/2022/143 final).²⁸ This proposal aims at enhancing consumer rights by amending two directives that protect the interest of consumers at Union level: the Unfair Commercial Practices Directive 2005/29/EC and the Consumer Rights Directive 2011/83/EU, “by enabling consumers to take informed purchasing decisions and therefore contribute to more sustainable consumption. It also targets unfair commercial practices that mislead consumers away from sustainable consumption choices. Furthermore, it ensures a better and more consistent application of EU consumer rules. (1.1) The proposal aims at: ·Providing information on the existence and length of a producer’s commercial guarantee of durability for all types of goods, or the absence of such guarantee in case of energy-using goods. ·Providing information on the availability of free software updates for all goods with digital elements, digital content and digital services. ·Providing information on the reparability of products, through a reparability score or other relevant repair information, where available, for all types of goods. ·Ensuring that traders do not mislead consumers

²⁵ See [Guidelines on the limited network exclusion under PSD2 | European Banking Authority \(europa.eu\)](https://www.eba.europa.eu/en/press-statements/long-2022/12/20221215-guidelines-on-the-limited-network-exclusion-under-psd2)

²⁶ See [Joint-Payments-Industry-Letter-on-Final-EDPB-Guidelines-PSD2-GDPR-Interplay.pdf \(ebf.eu\)](https://www.ebpf.eu/joint-payments-industry-letter-on-final-edpb-guidelines-psd2-gdpr-interplay.pdf)

²⁷ See https://ec.europa.eu/environment/strategy/circular-economy-action-plan_de .

²⁸ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0143&qid=1649327162410> .

about environmental and social impacts, durability and reparability of products. ·Ensuring that a trader can make an environmental claim related to future environmental performance only when this involves clear commitments. ·Ensuring that a trader cannot advertise benefits for consumers that are considered as a common practice in the relevant market. ·Ensuring that a trader can only compare products, including through a sustainability information tool, if they provide information about the method of the comparison, the products and suppliers covered, and the measures to keep information up to date. ·A ban on displaying a sustainability label which is not based on a certification scheme or not established by public authorities. ·A ban of generic environmental claims used in marketing towards consumers, where the excellent environmental performance of the product or trader cannot be demonstrated in accordance with Regulation (EC) 66/2010 (EU Ecolabel), officially recognised eco-labelling schemes in the Member States, or other applicable Union laws, as relevant to the claim. ·A ban on making an environmental claim about the entire product, when it actually concerns only a certain aspect of the product. ·A ban on presenting requirements imposed by law on all products within the relevant product category on the Union market as a distinctive feature of the trader's offer. ·A ban of certain practices related to the early obsolescence of goods.”
(Claudia Lima Marques)

CARICOM- CARICOM Model Consumer Protection Bill -The news are the lack of implementation of the 2015 CARICOM Model Consumer Protection Bill. In 2015, the Fortieth Meeting of the Council on Trade and Economic Development (COTED) approved the draft *CARICOM Model Consumer Protection Bill* which has been approved by the Legal Affairs Committee (LAC) in 2016 for implementation by Member States in two years. But in 2021, Jamaica's State Minister in the Ministry of Industry, Investment and Commerce, Hon. Sharon Folkes-Abrahams, has called on CARICOM member states to implement the Consumer Protection Model Law. Ms. Folkes-Abrahams said the legislation has been in the draft stage for “far too long.” The Bill, which falls under Chapter eight of the Treaty of Chaguaramas, speaks to the need for the promotion and protection of consumer interests, in relation to the supply of goods. It also addresses the provision of services to ensure the protection of life, health and safety of all consumers. The state minister was speaking during the opening of the 7th Consumer Affairs regional meeting held at the Knutsford Court hotel in New Kingston. (see [Call for CARICOM to Implement Consumer Protection Model Law – Jamaica Information Service \(jis.gov.jm\)](https://jis.gov.jm/)).(Claudia Lima Marques and Gladys Young)

MERCOSUR AND THE DIGITAL AGENDA – In 2021, MERCOSUR has completed 30 years.²⁹ In 29th April 2021, complementing the Resolutions on e-commerce (‘Resolução GMC N° 37/19 sobre comércio eletrônico’) and the Resolution on information rights on the Internet (‘Resolução GMC N° 21/04 “Direito à Informação do Consumidor nas Transações Comerciais Efetuadas Através da internet”’) the countries of MERCOSUR have signed a new Treaty on E-commerce (“*Acuerdo sobre comercio electrónico del Mercosur*” or “*Acordo sobre Comércio Eletrônico do MERCOSUL*”). The new treaty has one article on consumer protection (Art. 5), one on data protection (Art. 6) and one about international transfer of data (Art. 7) but is of a more declaratory

²⁹ See MARQUES, Cláudia Lima; VIEIRA, Luciane Klein; BAROCELLI, Sergio Sebastián (Org.). Los 30 años del MERCOSUR: avances, retrocesos y desafíos en materia de protección al consumidor. Buenos Aires: IJ Editores, 2021. Accessible in: <https://latam.ijeditores.com/index.php?option=publicacion&idpublicacion=836>. (10.01.22)

nature, aiming to assure the implementation of other MERCOSUR normative in the Member States. In 17th December 2021 a joint Declaration of the Presidents of MERCOSUR's Countries have approved a Digital Agenda for MERCOSUR . including the internationalization of this Acuerdo,³⁰ in order to fulfill the CEPAL's Digital Agenda for Latin America and The Caribbean (eLAC2022).³¹ (*Hector Valverde Santana and Claudia Lima Marques*)

NEW MERCOSUR's PRINCIPLES ON CONSUMER PROTECTION (By Vanina A. Ríos)³²

MERCOSUR has done an exhaustive work on regulating minimum protection standards for consumers regionally. In the bosom of the regional bloc, several consumer protection norms have been adopted. Of these, it is worth highlighting MERCOSUR Resolution MERCOSUR/GMC/RES. N°36/19 (hereinafter, MERCOSUR Resolution 36/2019), Resolution 36/2019, which sets forth the basic consumer protection principles, has been internalized in Argentina by Resolution 310/2020 of the Argentine Internal Trade Secretariat.

A) Preambulatory Clauses

MERCOSUR Resolution 36/2019 starts alluding to the normative harmonization commitment previously mentioned. Then, it sets forth the goal of advancing and fostering actions for consumer protection.” It's important that we stop at this point, as the procedural aspects of consumer protection come to light. “Advancing” means a common path to protection characterized by its “no regression,” as rights and principles adopted and acquired cannot be waived.

As part of this path, the analyzed resolution considers relevant “to update all basic principles on the matter.” The principles being guidelines for conducts, norms, and public policy, a continuous update thereof is required. In this sense, it is worth highlighting that, as far as consumer principles are concerned, these have not been unanimously consolidated to date.³³

From the analyzed preambulatory clauses we infer that within MERCOSUR integration, consumer protection stands as a cooperative and joint path, signed by the progressiveness of right recognition, in which the regulation of guiding principles implies

³⁰ Texts accessibles in [Declaração Presidencial sobre a Integração Digital no Mercosul — Português \(Brasil\) \(www.gov.br\)](https://www.gov.br/declaracao-presidencial-sobre-a-integracao-digital-no-mercosul-portugues-brasil). See also Digital Agenda, [Conquista 18: Agenda digital - MERCOSUL \(mercosur.int\)](https://www.mercosur.int/conquista-18-agenda-digital-mercosul) and “[Acordo de Reconhecimento Mútuo de Certificados de Assinatura Digital do MERCOSUL](https://www.mre.gov.py/tratados/public_web/DetallesTratado.aspx?id=2r0+6uBvKfThjKfA76FNlg%3d%3d)” (Decisão N° 11/19), o “[Acordo para a eliminação da cobrança de encargos de roaming internacional para usuários finais do MERCOSUL](https://www.mre.gov.py/tratados/public_web/DetallesTratado.aspx?id=2r0+6uBvKfThjKfA76FNlg%3d%3d)” (Decisão N° 01/19) e o “Acordo sobre o Comércio Eletrônico do MERCOSUL” (https://www.mre.gov.py/tratados/public_web/DetallesTratado.aspx?id=2r0+6uBvKfThjKfA76FNlg%3d%3d).

³¹ See [Microsoft Word - 20-00902 CMSI.7 Digital agenda eLAC2022 \(cepal.org\)](https://www.cepal.org/es/publicaciones/2021/07/microsoft-word-20-00902-cmsi-7-digital-agenda-eLAC2022) . (10.01.22)

^{32*} Lawyer (University of Buenos Aires.) Legal Consultant for the Argentine Direction of Consumer Protection and Consumer Arbitration; Head of the International Relations Coordination, Buenos Aires, Argentina. Extract of the a paper accepted at the Macau Journal of Brazilian Studies.

³³ Barocelli, Sebastián, Capítulo II. La relación de consumo como categoría delimitadora del ámbito de aplicación del Derecho del Consumidor, nacida del contacto social, IJ Editores, IJ-MCXXIX-769

their hierarchization as founding and inspiring elements to the system, while contributing to legal stability and converging towards normative harmonization.

B) Principles

Section 1 of the analyzed international norm expressly recognizes the structural weakness of consumers in the market.³⁴ This weakness inspires all the protection granted under Section 42 of the Argentine Constitution and CPA Section 1, which sets as its purpose the protection of consumers.

The structural weakness of consumers has its cause in “market failures”,³⁵ which causes the relation between consumers and providers to be asymmetrical.

Having recognized this characteristic, Section 1 refers to the needed integration of local and international law on consumer protection and selects the dialog of sources as the preferred construction rule.

Next, the principles set forth in the analyzed regulation shall be briefly explained.

1) Principle of progressiveness and no regression

Garrido Cordobera explains that the principle of progressiveness and no regression is both a positive and negative legal imperative.³⁶ The negative aspect arises from the prohibition of annulling recognized consumer rights, and positive in that authorities have the duty to legislate with views of advancing and fulfilling rights.

The resolution orders “to ponder costs and benefits of the policies proposed,” as regards progression and no regression, which implies setting forth action sustainable in time, both in the normative and operative perspective. To that end, it is necessary to know the risks within consumption societies, the practices deployed by goods and services providers, and to promote education for consumers and guidelines for actors in supply chains, with views of raising awareness in the market and fostering compliance of the enacted policies.

2) Principle of public order protection

Public order may be defined as the “...set of superior ideas or principles, of political, economic, philosophic, social and cultural nature, which in a given place and time are regarded as necessary for the existence and organization of the community.”³⁷

The declaration of public order as the guiding principle in the consumer protection system implies that their precepts are imperative. Consequently, these cannot be waived, must be applied *ex-officio* by agencies, and the legitimacy of State actions in designing

³⁴ It is worth mentioning that the Argentine Supreme Court has issued opinions on this inequality in Fallos:339:1077; 340:172, among others.

³⁵ REICH, Norbert, *Mercado y Derecho*, Barcelona, Ariel, 1985, p. 10.

³⁶ GARRIDO CORDOBERA, Lidia M. R., “El sistema protectorio y la aplicación de los principios en el proyecto de Ley de Defensa del Consumidor. Una acertada respuesta a los desafíos actuales”, *Diario LA LEY* del 05/08/2019, 1.

³⁷ BAROCELLI, Sebastián, “El orden público como principio general, transformaciones y alcances a partir del Código Civil y Comercial”, *elDial* DC2041, published on 2015-11-23.

and implementing public policy. Moreover, this character implies the annulment of the acts that have been celebrated in opposition to the recognized rule.

This principle is manifested in the Argentine Law by means of Section 65 LDC, in which the public order nature of the norm is set forth.

3) Principle of access to consumption

Jurisprudence shares the understanding that access to consumption is an implied right³⁸ granted by the Argentine Constitution, the Human Rights Treaties, and the UN Guidelines. The recognition of access to consumption at the regional level implies a joint and simultaneous search of all States to achieve standards of dignity and equality. For said goals, it is necessary to achieve a minimum access to essential goods for satisfying basic needs.

The articles refer to the “quality” requirement of goods and services, which refers to minimum product safety standards, as well as consumer adequacy and durability standards. In this sense, Argentine Law provides the right to economic interest protection (Section 42 of the Argentine Constitution,) that includes the assertiveness of decisions and measures throughout consumer relations that ensure respect to economic protection standards.³⁹

4) Principle of market transparency

Market transparency is a legal and policy ideal in views of achieving an equilibrium of competition between providers, also respecting consumer freedom of entrance into agreements. Member States also have the duty to search and find all unfair practices that harm individual rights, as well as the abuse of a dominant position or different mechanisms by which final consumers are held captive.

The normative integration set forth in Section 3 of the LDC combines consumer protection with laws that protect consumers as a group, such as the Commercial Loyalty Act and the Competition Defense Act. An equal protection is provided in Section 11 of the Argentine Civil and Commercial Code (hereinafter CCC,) with regards to abuse of dominant position in Section 11, the recognition of the right to information in Section 1100, and freedom of choice in Section 1099.

5) Principle of sustainable consumption

The environment is the main source of sustenance for human and non-human persons, and for supplies for production as well. This affirmation is valid for current and future generations, and this principle goes hand in hand with inter and intragenerational solidarity, so that production and consumption must ensure resources for the sustenance of future generations.

This subsection recognizes the ecological dimension of sustainable consumption, inasmuch it seeks to reduce the environmental impact of production and consumer habits.

³⁸ BAROCELLI, Sebastián, “Los derechos de los consumidores y usuarios. A 25 años de la reforma constitucional de 1994”, in *Las deudas y promesas incumplidas de la reforma constitucional de 1995. A 25 años*, BENENTE, Mauro, 1º Ed. José C. Paz: Edunpaz, 2019, p. 417.

³⁹For instance, CPA sections: 10 *bis*, *ter* and *quater*, section 11 warranties, protection in services, including public utilities from section 19 to 31, protection in purchases at distance, and protection against unfair terms.

But the extension of the sustainable consumption principle is still being developed and implies at the least an ethical dimension that promotes responsible decision making; an equal of social dimension in which the products and services cause changes in the labor and social levels; and an economic dimension, seeking an equal distribution of wealth, fair trade, and the development of a social economy.⁴⁰

6) Principle of special protection for vulnerable and disadvantaged consumers

Given the structural weakness of consumers in the market, this principle showcases the need for special protection for certain consumers. In Argentina, the adoption of Resolution 139/2020 of the Argentine Internal Trade Secretariat recognized the hypervulnerability of certain consumers. Later, MERCOSUR stated its opinion on this category through Resolution MERCOSUR/GMC/RES. No. 11/21 (hereinafter, MERCOSUR Resolution 11/2021). Both rules offer a definition and an open enumeration of hypervulnerability scenarios, which must be regarded in each case when they create a barrier of access to fundamental rights within a consumer relation.

MERCOSUR Resolution 11/2021 recognizes the following categories of hypervulnerability: being a child or a teenager; being an older person pursuant to the Inter-American Convention on Protecting the Human Rights of Older Persons; having a disability; being a migrant; being a tourist; belonging to indigenous communities, original people or ethnic minorities; facing socio-economic vulnerability; being member of a monoparental family with minors or disabled people under your care; facing health issues.⁴¹

This principle motivated public policies placing on authorities the duty to promote measures for solving conflicts and accessing justice, promoting the use of clear language and assisted protection. In 2020, under Resolution 139/2020, the Internal Trade Secretariat solved 3,247 claims, most of them involving financial services, insurances, telecommunication, and public utilities.⁴²

7) Principle of respect to human dignity

The MERCOSUR Resolution places on providers a duty to respect dignity. This obligation is present throughout the consumer relation: precontractual, including offer, publicity, negotiation, and closing of an agreement; to the post-contractual stage, including providers' availability to claim reception and treatment, dispute resolution mechanisms, and post-purchase services like warranties and technical support.

As a transversal passive subject to all consumption relations are authorities, as the analyzed principle must be respected in all public policies. Some of the recent norms adopted by the enforcement agency that aim to the respect of this principle are Resolution

⁴⁰ BAROCELLI, Sebastián, "Los derechos de los consumidores y usuarios. A 25 años de la reforma constitucional de 1994", in *Las deudas y promesas incumplidas de la reforma constitucional de 1995...*, op. cit., p. 418.

⁴¹ Compared to Argentine Resolution 139/2020, MERCOSUR does not recognize as vulnerable the following categories: being part of the LGBT+ collective (lesbians, gays, bisexuals and transgender,) rurality, and residence in popular neighbourhoods pursuant Act No. 27,453.

⁴² Information available at: <https://www.argentina.gob.ar/produccion/defensadelconsumidor/hipervulnerables> (Accessed: 2021-11-20.)

236/2021⁴³, Resolution 424/2020⁴⁴, Resolution 271/2020 and complementary provisions⁴⁵, Resolution 274/2021⁴⁶, Resolution 616/2020⁴⁷, and Resolution 889/2021⁴⁸.

8) Principle of risk prevention

This principle refers to the prevention of risks that providers must undertake when there is a probable reason of threat derived from risky products and services.

This is also legislated under CPA Sections 5 and 6 as well as in the mechanisms of Alert and Retrieval of Products, provided for under Section 4 of Executive Order 1798/1994.

To that end, in view of the necessary prevention, the spaces of international cooperation are to be highlighted, as they promote the exchange of information regarding product safety, such as the Consumer Safety and Health Network of the OAS.

9) Principle of non-discrimination

In the Argentine Constitution, formal equality is granted under section 16, 18, and 20, among others. These rights have a negative phase, in that neither the State nor any operation within the society may make any irrational or arbitrary distinction.

Complementarily, section 75(23) of the Argentine Constitution grants material equality. This is a positive provision that places on Congress the duty to promote and legislate positive action measures to ensure real equality of opportunities and of treatment, especially for women, older persons, disabled persons, and children. While this enumeration is express, it doesn't exclude other disadvantaged collectives that have been historically left behind.

In consumption relations, CPA Section 8 *bis* fulfills this principle, as it provides the duty of equal and dignified treatment to consumers. This section, and its equivalent on the CCC, section 1098, refers especially to nationality. Therefore, it is worth remembering that the condition of tourist or migrant is considered a hypervulnerability pursuant the already studied Resolution 139/2020.

10) Principle of good faith

Good faith implies "...behaving like honest people, with loyalty and righteousness."⁴⁹ In the preliminary title to the CCC, in section 9, it establishes that rights

⁴³ It provides the mechanisms for child and teenager participation in consumer conflict resolution.

⁴⁴ It provides the duty of providers to have a "cancellation button" in their websites.

⁴⁵ It provides the details on the visibility of the "cancellation button" and the services that must comply with its implementation under Resolution 316/2018.

⁴⁶ It provides the "Single-Federal Window" for channeling claims, and the duty of providers to have a "claim button."

⁴⁷ It sets the procedure for claiming the virtual conciliation hearings under COPREC.

⁴⁸ It sets the obligation of arbiters of the National Consumption Arbitration Service to continually train themselves on gender.

⁴⁹ RIVERA, Julio César, *Derecho civil, parte general*", 1° ed., Ciudad Autónoma de Buenos Aires, Abeledo Perrot, 2016, p. 190.

must be exercised in good faith. Also, CPA Section 37 mentions expressly this duty throughout all consumer relations.

This principle aspires to the formation of transparent markets, as its fulfillment generates the formulation and respect as well of other two principles: the principle of trust and the principle of transparency.⁵⁰ These two principles inspire the conduct of both consumers and providers, as the firsts deposit their trust on the latter under the presumption of truth and transparency of communications (offer, publicity, etc.) Hence, the right to information and the fulfillment of the resulting obligation in the head of providers makes for the respect of good faith.

11) Principle of information

This principle places on providers the duty to protect consumers' economic interests by means of supplying information. In this sense, it must be highlighted that consumption decisions are taken amidst the ebbs and flows of the market by means of advertising, in all their variants, including influencers, offers, and programmed obsolescence, all of which makes it difficult to discern consumers' own and forced needs.

As a response, our law provides this principle by means of CPA Sections 4, 7, 8 and 9, among others. In all of them, the duty of information is detailed, and it is strengthened in transactions at distance (Sections 32 to 35.)

12) Principle of harmonization

The principle of harmonization of interests between providers and consumers urges States to protect equally and sustainably interests of both parties, ensuring the protection of their economic interests equally, and the continuity of both their consumptions as their economic activities.

Harmonizing interests is challenging given the asymmetry of the consumption relation. So, the path for said harmonization must include actions to equilibrating the relation, which include fostering dialog and consensus from said equilibrium. To that end, it is paramount that there are dispute resolution mechanisms inviting dialog roundtables for creating consensus in consumption relations.

In this path, it is worth noting once more Resolution 616/2020, which allowed the continuity of the Pre-judiciary Conciliation System in Consumption Relations in a completely virtual manner, despite the negative effects of COVID-19. To this must be added the access to the National Consumption Arbitration System, where consumers can access tribunals composed by one State member, a member of consumer associations, and a member of Commerce Chamber, ensuring an equilibrium when pondering interests.

13) Principle of integral reparation

This principle inspires reparation in case of damages derived from consumption relation by means of solving controversies and compensations.

Providers are passive subjects in customer support and dispute resolution, and the State, in public policies and dispute resolution legislation in consumption relations.

⁵⁰ BAROCELLI, Sebastián, "Principios y ámbito de aplicación del derecho del consumidor en el nuevo Código Civil y Comercial", DCCyE 2015 (February), 20215-02-24, 63, Online quote: AR/DOC/412/2015.

Some characteristics that contribute to the compliance of this principle is that consumers have access to fast means of support and dispute resolution, which are free, easy to access, in plain language, and open to everyone on an equal basis. For that end, channels for dispute resolution must be federal, and both virtual and in person.

14) Principle of equal protection

This principle promotes a level of protection in e-commerce that may never be lower than other trade modes.

According to the Argentine Statistics Institute, in the fourth term of 2020, 90% of urban households have access to the internet.⁵¹ Statistics from the National Direction of Consumer Protection and Arbitration during 2020, 235,445 claims were filed, of which 210,890, 90%, are related to consumption at distance. Between January and July 2021, 157,006 claims were filed, of which, 138,914, 88%, also refer to consumption at distance⁵². The data shows a sharp increase of online transactions and of disputes. This modality provides consumers with quickness, comfort, and the possibility of comparing prices and products remotely. Moreover, it opens a wide array of benefits to providers, from cost reduction to the possibility of collecting substantial data from consumers.

Electronic commerce puts in motion industries fostering the economy. That is why the MERCOSUR regulation fosters it by forwarding policymaking towards trust enhancement in e-commerce. This is balanced by an equal protection clause, a principle repeated in UN Guideline 63 and in the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce.

Likewise, it is worth noting newer norms promoting consumer protection in the digital environment: Resolution 271/2020⁵³, Resolution 449/2020⁵⁴, and the Resolutions 424/2020, 271/2020 and complementary provisions, and 274/2021.

The equal protection set, it is necessary to go further than the principle, and promote a special protection considering the hypervulnerability of consumers operating in the digital environment. The additional vulnerability suffered is grounded on the notion that online activity is risky, especially when considering “digital gaps”⁵⁵. MERCOSUR Resolution 36/2019 ends with a clause in Section 2 that refers to additional principles that States may keep. We understand that this provision reinforces the idea that principles open a path of development and progression that must be complemented by the diverse local experiences.

⁵¹ Available at: https://www.indec.gob.ar/uploads/informesdeprensa/mautic_05_213B13B3593A.pdf (Accessed: 2021-10-01.)

⁵² More information at: <https://www.argentina.gob.ar/produccion/defensadelconsumidor/indicadores/reclamos> (Accessed: 2021-10-01.)

⁵³ It establishes the guidelines for the publication of terms and conditions in providers’ websites.

⁵⁴ It establishes the guidelines for the publication of accepted means of payment by providers.

⁵⁵ BAROCELLI, Sebastián, “La protección de los consumidores en entornos digitales. Aportes a una teoría general”, en BAROCELLI, Sebastián, TORRES SANTOMÉ, Natalia (Directores), *La protección de los consumidores en el entorno digital*, 1° ed., Ciudad Autónoma de Buenos Aires, El Derecho, 2021, p. 32-33.

III. NATIONAL EFFORTS ON INTERNATIONAL PROTECTION OF CONSUMERS

ARGENTINA - DRAFT "CODE" OF CONSUMER DEFENSE IN ARGENTINA-

In 2020 and 2021, the Consumer Protection Bill (hereinafter “Project” or “PLDC”) was presented to the Honourable Senate of the Argentine Nation. This authentic "Consumer Code" is based on the Preliminary Draft prepared by a Reform Commission that was made up of twelve renowned jurists. Likewise, said the document was made available to the entire community through the organization of different public hearings and other academic meetings so that the entire society can make their contributions and/or comments. In this context, because of the dizzying changes that have occurred in modern societies - largely as a consequence of the so-called "Digital Revolution" - it is imperative to update current regulations to adequately respond to current consumer needs. That is why the Project was created to adapt the protective regulations to current times, as well as making the necessary adjustments by the modifications incorporated with the entry into force of the Civil and Commercial Code of the Nation in 2015. Also, this Project was presented to the Intergovernmental Group of Experts on Consumer Protection Law and Policy (hereinafter “IGE”) in the fourth session in July 2019. One of the most important issues that the Project brings is the incorporation of the principles of consumer law. Article 5 of the PLDC recognized the structural vulnerability of all consumers, determining that the protection system should integrate all international, national, provincial and municipal regulations, guided by the following principles: a) Principles of progressivity and non-regression. b) Principle of public order of protection. c) Principle of access to consumption. d) Principle of market transparency. e) Principle of sustainable consumption. f) Principle of special protection for hyper vulnerability situations. g) Principle of respect for the dignity of the human person. h) Principle of risk prevention. i) Precautionary principle. j) Anti-discrimination principle. The incorporation of the principles in the law would fulfil a series of functions aimed at enhancing consumer protection. Mainly, the principles of article 5 of the PLDC would serve as a guideline for the integration of the different legislation of the legal system with those specific to the protective framework of the consumer. In summary, the Project is beginning its legislative course. Much of the academic community supported the proposed text, considering that it would represent an important advance in the protection of consumers in Argentina. In turn, this Draft Code is in tune with the Human Rights Treaties and especially with the United Nations Guidelines for Consumer Protection. For all these reasons, it can be concluded that, in general terms, the Project would imply a strengthening of the rights of Argentine consumers. **(Ezequiel N. Mendieta)**

BRAZIL – REFORM OF THE 1990 BRAZILIAN CONSUMER CODE. The Brazilian Consumer Code (CDC) is undergoing updating. The Brazilian Senate has approved two law bills, one of which is now Act No. 14,181, to prevent and remedy over-indebtedness and the second is currently being evaluated by the Chamber of Deputies (PLS 281/12 or PL 3514, 2015). These bills were based on two projects prepared by a special committee of lawyers, headed by Minister Antonio Herman Benjamin. The objective of the Reform is to increase consumer protection, especially due to new technologies and the growth of international trade. Originally, three draft Bills were

presented to Congress by a Committee of Jurists presided by Justice Herman Benjamin (Superior Court of Justice) and the premises of the proposals indicated in the final report were "to add, never reduce consumer protection in Brazil" and "respect the principle and general structure of the CDC." The first, Senate Bill 281/2012, currently Chamber of Deputies Bill 3514/2015, on national and international e-commerce. The Bill focuses on the contractual duties of providers and professionals in case of distance and e-commerce consumer contracts and the right of withdrawal (current Article 49 CDC). It was approved by the Senate in 2015 and is currently pending approval in the Chamber of Deputies. Second, the Commission presented the first draft of Senate Bill 282/2012, to improve the discipline of class actions, but this project was unfortunately archived. Third, Senate Bill 283/2012 or Chamber of Deputies Bill 3515/2015, which was enacted in 2021 and is now Law n° 14,181/2021, and disciplines consumer credit and over-indebtedness. Law No. 14,181 of July 1st 2021 amends Law No. 8,078/1990 (CDC), and Law No. 10.741/2003 (Statute of the Elderly), to improve the discipline of consumer credit and provide for the prevention and treatment of over-indebtedness. The law originated from a Bill presented to the Senate in 2012 and was originally registered as PLS 283/2012 focusing on the regulation of consumer protection against over-indebtedness and abusive commercial practices of offering credit. It was approved by the Senate in 2015 and stayed under discussion in the Chamber of Deputies until 2021 (registered as Bill 3515/2015). Law n. 14,181/2021 provides for the prevention of over-indebtedness of the natural person and establishes rules to impose responsible credit and financial education of the consumer. It also prohibits the harassing or pressuring the consumer to contract the supply of a product, service, or credit, especially if the consumer is elderly, illiterate, ill or in a state of aggravated vulnerability, or if the contract involves a premium. Law No. 14,181 introduced to Brazilian legislation the institutionalization of combating harassment of consumers, identifying harassing and overly aggressive marketing strategies focused on certain groups, such as the elderly and illiterate. The standard used was the Unfair Commercial Practices Directive, 2005/29/CE, whose article 8 uses as a definition of aggressive practices, which include harassment, coercion, physical force and undue influence. The option of the Brazilian legislator was to consider consumer harassment (*'assédio de consumo'*) as the category of all aggressive commercial practices that limit freedom of consumer choice. Unfortunately, the rule about Private International Law was vetoed by the President Bolsonaro together with a right to withdraw. So about the ongoing reform in Brazilian Consumer Law, we can state: Law No 14,181/2021 from July of 2021 introduced new and important specific consumer protection standards to prevent and remedy consumer over-indebtedness. The bill concerning electronic commerce (Bill 3514/2015) was approved by the Senate and is still under consideration in the Chamber of Deputies and has good perspective to be approved in a near future. Bill 3514, 2015 also presents two new articles on Private International Law for consumer contracts, changing the Introductory Act to the Norms of Brazilian Law. On December 20, 2017 Mercosur (the Trade Union between Brazil, Argentina, Uruguay, Paraguay, Venezuela and Bolivia) approved the first Convention on international protection of consumers, the "*Acuerdo Mercosur sobre la ley aplicable a los contratos de consumo*", adopting a new connecting factor: the law most favorable to the consumer.⁵⁶ Inspired by

⁵⁶ See MERCADO COMUM DO SUL (MERCOSUL). Acordo do MERCOSUL sobre Direito Aplicável em Matéria de Contratos Internacionais de Consumo. Brasília: 20 dez. 2017. Accessible

the Brazilian-Argentine-Paraguayan CIDIP VII Proposal and the 1980 Rome Convention and the Rome I Regulation on the law applicable to contracts, the new Mercosur Convention follows the Brazilian proposal and should also have some impact on the updating of the CDC. Along with a presidential decree that stipulates important rules to e-commerce, several jurisprudential decisions have applied the rules of the CDC to electronic transactions between consumers and suppliers in 2020. **(Claudia Lima Marques and Roberto Castellano Pfeiffer)**

BRAZIL – NEW INTERAMERICAN CONVENTION IN THE ‘BLOC CONSTITUTIONNEL’ – Brazil have ratified the Interamerican Convention against Racism (Convenção Interamericana contra o Racismo, a Discriminação Racial e Formas Correlatas de Intolerância) and following the Paragraph 3 of Article 5 of the Brazilian Constitution the new Decree 10.932/2022 has status of a Reform of the Brazilian constitution (‘emenda constitucional’). Together with the Marraquesch Treaty (Convenção, o Tratado de Marraqueche para Facilitar o Acesso a Obras Publicadas às Pessoas Cegas, com Deficiência Visual ou com Outras Dificuldades para Ter Acesso ao Texto Impresso, Decree 9.522/2018) and the UN Convention on the Rights of Persons with Disabilities (Convenção Internacional sobre os Direitos das Pessoas com Deficiência e seu Protocolo Facultativo, Decree 6.949/2009). **(Claudia Lima Marques and Hector Valverde Santana).**

GERMANY – Entering in to force in 2022, the *Fair Consumer Contracts Act* (Gesetz für faire Verbraucherverträge) has been promulgated, strengthening consumer rights and extending the obligations of businesses. The new Section 308 no. 9 of the German Civil Code (BGB) declares agreements invalid which exclude or restrict the assignment of monetary claims of the consumer. The Fair Consumer Contracts Act also restricts the possibility of automatic contract renewal clauses through general terms and conditions. In future, contracts regarding the regular provision of products or services may be terminated with a notice period of not more than one month before the expiry of the contract term. Contracts for the supply of goods sold together and insurance contracts are legally exempt from these provisions. The new law to avoid complicated termination processes between consumers and enterprises has introduce a mandatory ‘termination button’ as the well know in electronic commerce, "order button" (Section 312j (3) sentence 2 BGB). **(Christoph Benicke).**

PORTUGAL –The Portuguese Decree-Law No. 84/2021, of October 18, which regulates consumer rights in the purchase and sale of digital goods, content and services, transposes Directives (EU) 2019/771 and (EU) 2019/770. The new legislation represents an important strengthening of consumer rights, introducing important changes to the rules on guarantees, providing also rights for consumers in relation to the provision of digital content and services. Among other rules, the diploma establishes, the rights of consumers in the event of non-compliance (in particular defects) of movable goods, including

movable goods with digital content, immovable property, and digital content and services». **(Anabela Gonçalves)**

MACAU, CHINA - In 2021, a new law for the protection of consumer rights and interests in Macau was passed – Law No. 9/2021, of 12 July. The new law, in a way, revolutionizes the consumer protection regime in Macau, filling important gaps in the legal regime and taking significant steps towards the modernization of consumer relations in the Region. Prior to the passing of Law 9/2021, the regulation of consumer relations was characterized by the absence of a comprehensive consumer protection law that would ensure adequate protection of consumers' rights and interests. Although, nominally, there was a special consumer protection law (Law 12/88/M), it was largely incomplete, being essentially limited to the enunciation of principles and rights related to consumer protection, without providing solutions for the most of the typical problems of consumer relations. The treatment of specific problems related to the supply of goods and services to the consumer was fragmented. With the exception of some issues dealt with through separate legislation, such as those relating to general contractual clauses, most of the legal problems inherent to consumer relations did not benefit from special treatment, with the same general regime applicable to consumer relations in force, under the terms of the Civil Code or the Commercial Code. For example, as there was no special regulation of contracts on the purchase and sale of consumer goods or provision of services to the consumer, the applicable rules were the general rules on purchase and sale contracts established in the Civil Code, including for the treatment of situations of non-compliance and compensation for damages. Finally, it is worth mentioning the fact that the Consumer Council's powers have been significantly expanded to include supervisory powers, including the power to demand information from commercial operators, being able to resort to the assistance of the police authorities in case of opposition or resistance (art. 66). The new law also grants the Consumer Council powers to conduct the process of ascertaining whether or not an infringement has occurred (art. 72) and, if so, to apply the necessary administrative sanctions (art. 68). In general, it can be said that the Consumer Council is, with the new regime, a regulatory entity of consumer relations, playing a more active role in the elaboration, dissemination and promotion of policies, as well as in monitoring compliance with the law and in the resolution of disputes (art. 7). These developments obviously have the potential to improve the quality of policies to protect consumer rights and interests and the effectiveness of substantive protection provided for in the laws. **(Wei Dan)**

URUGUAY – On November 2020, Uruguay has approved a new Law on PIL (*'Ley General de Derecho Internacional Privado'*),⁵⁷ with two new rules for consumer contractual and tort cases. For consumer contracts, the Private Autonomy is excepted. Article 50 of the General Private International Law states: “Artículo 50. (Soluciones especiales).- No son aplicables las normas anteriores del presente capítulo a los siguientes contratos aunque revistan la calidad de internacionales, los cuales se regirán por las normas que a continuación se indican:[...] E) Los contratos otorgados en relaciones de consumo se rigen: 1) Por la ley del Estado donde los bienes se adquieren o los servicios

⁵⁷ Fecha: 17/11/20 | Carpeta: 619/2020 | Destino: Ejecutivo | Comisión: Constitución, Códigos, Legislación General y Administración. Accessible in <http://www.diputados.gub.uy/proyectos/ley-general-de-derecho-internacional-privado-aprobacion-2/>.

se utilizan por parte del consumidor. 2) En caso de que los bienes se adquieran o los servicios se utilicen en más de un país o no pudiere por otras circunstancias determinarse dicha ley, se regirán por la ley del lugar del domicilio del consumidor. 3) En los contratos celebrados a distancia, así como cuando la celebración ha sido precedida de ofertas o publicidad específica en el domicilio del consumidor, se aplicará la ley de este Estado, siempre que el consumidor hubiere prestado su consentimiento en él.” There are also a new rule for non contractual cases: “SECCIÓN II OBLIGACIONES QUE NACEN SIN CONVENCIÓN Artículo 52. (Ley aplicable).- Las obligaciones no contractuales se rigen por la ley del lugar donde se produjo el hecho o acto, lícito o ilícito, que las genera o por la ley del lugar donde se produjo el daño, a opción del damnificado. Si el demandado por el hecho dañoso y el reclamante por este hecho tuvieran su domicilio en el mismo Estado, se aplicará la ley de este. Si el hecho dañoso se produjere durante la navegación aérea, marítima, fluvial o lacustre en zona no sujeta a soberanía estatal exclusiva, se considerará que el mismo se produjo en el Estado de la bandera del buque o registro de la aeronave, sin perjuicio de lo establecido en las normas especiales. Las obligaciones no contractuales que nacen por disposición de la ley, se rigen por la ley que regula la categoría jurídica a que responden. Artículo 53. (Ámbito de aplicación de la ley).- La ley aplicable a las obligaciones no contractuales rige el alcance y las condiciones de la responsabilidad, comprendiendo la determinación de las personas que son responsables por sus propios actos, las causas de exoneración, los límites, la distribución y división de la responsabilidad, la existencia y naturaleza de los daños indemnizables, las modalidades y cuantía de la indemnización, la transmisibilidad del derecho de indemnización, los sujetos pasibles de indemnización, la responsabilidad por hecho ajeno, y la prescripción, caducidad y cualquier otra forma de extinción de la responsabilidad incluyendo la determinación del comienzo, suspensión e interrupción de los plazos respectivos.” (Claudia Lima Marques)

IV – DRAFT INTERIM RESOLUTION: SUGGESTION ONE “CONSUMER GLOBAL COMPACT IN THE DIGITAL ECONOMY”

The International Law Association was founded in 1873 together with the *Institut de Droit International* and has since 2008 a Committee on International Protection of Consumers.⁵⁸ The Committee was created as a response to a proposal by the Brazilian Branch, because of the increase of the importance of the consumer protection in the current globalized markets and has today Members from 16 different countries/jurisdictions. The Committee has published two books together and issue two Resolutions⁵⁹ and work intensively for the development of standards of protection of consumers in cross-borders situations.

⁵⁸ See the Rio de Janeiro findings the first Discussion Paper at www.ila-hq.or/en/committees/index.cfm/cid/1030

⁵⁹ INTERNATIONAL LAW ASSOCIATION, Report of the Seventy-Fourth Conference – The Hague (London, 2010), 259. (www.ila-hq.or/en/committees/index.cfm/cid/1030) and Resolution ILA 4/2012 75° ILA Conference, Sofia, Bulgaria, from 26 to 30 August 2012. Also has elaborate one Statement. The Amsterdam Statement of the Committee on International Protection of consumers is as follow: “1. Consumer protection must be a part of the international agenda of both public and private international law, taking account of the fact that consumers are the weaker parties. 2. Therefore, the consumers have the right to the application of minimum mandatory rules and should be able to take advantage of the most

For the Committee on international protection of consumers (ILA) is time to advance the consumer protection law and policy in cross-borders and international transactions, especially in e-commerce. Our believe is that the International Law Association can help the development of the international protection of consumers in our globalized world engaging reaching, without boundaries all big techs and digital marketplaces the world, calling for due diligence and corporate responsibility policies to respect consumer rights worldwide, for the implementation of data protection by design, for rethink strategies to facilitate consumer redress and access to justice, enhancing consumer trust in international digital markets.

The UN Guidelines for Consumer Protection - revised in 1999 to include sustainable consumption and now in 2015 - bring important suggestions to address the new issues of consumer society, such as distance consumption, by electronic means and mobile, the privacy and data protection, efficient and fair dispute consumer resolution mechanisms, the protection of 'hyper'-vulnerable consumer,⁶⁰ the financial and credit services, travel and e-tourism, the empowerment of consumer protection agencies, and in our subject, the international protection of consumers. Principles for good business practices of UNGCP 11 include not only consumer rights, but also data protection, consumer enforcement, access to justice and to consumer redress.

So we consider that consumer rights are a key part of the so-called global governance⁶¹ and that consumer trust on the digital global market can play a key role,⁶² as the prevention of harms with corporate responsibility and ESGs are the new key for global success.⁶³ States alone are not always able to protect consumer internationally, they need support not only from the economic blocs, but also from the civil society and companies. Soft law can encourage and propose pacts for and with society's agents,

favorable law. 3. Considering the consequences of the global financial crisis, triggered by inadequate regulation of consumer credit, there is a need to ensure effective, fair and transparent regulation of consumer financial services which recognizes the central role for consumers throughout the world.", in INTERNATIONAL LAW ASSOCIATION, *Report of the Seventy-Fourth Conference – The Hague* (London, 2010), p.259.

⁶⁰ The expression are used is "vulnerable and disadvantage consumers" (III, .5), the expression hiper-vulnerable is Antonio Herman Benjamin, initially in lectures and, later, in the decision: "the ethical-political category, and also legal, of vulnerable subjects includes a subgroup of subjects hiper-vulnerable, [...] When you protect the hiper-vulnerable, strictly speaking ends benefited is truly the society itself, as expected respect for the collective social inclusion pact imperative, which is expensive, not for his patrimonial facet, but precisely by embracing the intangible and humanist dimension of the principles of human dignity and solidarity. Ensure judicial inclusion (that is, recognize the legitimacy to Act) of these people hiper-vulnerable, including of the intermediaries who is up to represent them, not to leave any rough justice for lack of rights spokesman offended." (STJ, REsp 931,513/RS, p/Judgment Minister Herman Benjamin, first section, tried in 11/25/2009, Laurence 9/27/2010).

⁶¹ MARQUES, Claudia Lima. Perspectives for Consumer Protection in the XXI Century, in *Macau Journal of Brazilian Studies*, vol. 4, issue 1, 2021. Accessible in <http://aebm.mo/en/list-29/106> (14.01.2021).

⁶² MARQUES, Claudia Lima. *Confiança no Comércio eletrônico e a proteção dos consumidores*. Ed. RT/Thomson Reuters: São Paulo, 2004, p. 9 ff. See also CHUNG, Alex; YU, Ying. Consumer trust in the digital economy: The case for online dispute resolution, in *UNCTAD Research Papers* 72, p. 7, accessible in https://unctad.org/system/files/official-document/ser-rp-2021d15_en.pdf (14.01.2022).

⁶³ See RIEFA, Christine. Coronavirus as a catalyst to transform consumer policy and enforcement. *Journal of consumer policy*, v. 43, n. 3, p. 451-461, 2020, p.451ff. See also WILLET, C. "Re-Theorising Consumer Law". *Cambridge Law Journal*. Vol. 77(1), pp. 179-210, March 2018, MICKLITZ, H.-W.; DUROVIC, M. "Internationalization of Consumer Law - A Game Changer". Cham: Springer, 2017. And Twigg-Flesner, C., Howell, G., & Wilhelmsson, T. (2018). *Rethinking consumer law*. London: Routledge.

including companies, in the adoption of consensual standards of conduct that can improve the lives of citizens.

The challenge of the new cross-border digital consumption is high, as the *Consumers International* states: “E-commerce transactions are expected to be worth £4.1 trillion by 2023, up from £1.5 trillion in 2016⁶⁴. Internationally 1.48 billion people shopped online in 2019⁶⁵, with online shoppers totaling 53% of the population of high-income countries, 16% in upper middle income, 5% in lower middle income and 2% in low-income countries. Alongside the growth of e-commerce, online marketplaces have been particularly successful offering consumers additional convenience and choice. Many marketplaces now account for a significant proportion of online sales in countries around the world. However, consumer policy and enforcement have not yet caught up with new consumer behaviours and business practices. As a result, gaps in regulation, uneven enforcement, and insufficient cross border co-operation can leave consumers at risk, and responsible businesses undercut.”⁶⁴

The Committee suggest to take advantage of the large concentration of 'big techs' and 'big players' in the digital world to propose a Business Pact aimed at protecting consumers in the digital environment. A positive use of business standards is proposed in order to create a public declaration of commitment of these great players of the online e-commerce to consumer protection. For this reason, we want to highlight three element that can help the success of the endeavor:

1. COVID-19 pandemic and the need to rethink consumer protection mechanisms

The expansion of the consumer e-commerce and digital contracts during the COVID-19 pandemic is undeniable.⁶⁵ As CHUNG and YU states: “The onset of the 2019 Novel Coronavirus (COVID-19) global pandemic has instigated a tectonic shift in the digital sphere. From socializing and working, to the rolling-out of public health applications and treatments, the pace of digitalization has accelerated like never before. The impact is being felt much more acutely in developing regions of the world, where a dramatic uptake of online products, services, information, and activities have been reported (UNCTAD Survey Report 2020, October). Meanwhile, unequal access to digital provider of goods and services amongst developing economies and inadequate protection for consumers and vulnerable populations online have become more pronounced. Despite sustained sectoral efforts at bridging the digital divide, this major turn of events has exposed existing legal and regulatory deficiencies that impact consumer trust in profound ways.”⁶⁶

⁶⁴ Consumers International guideline for online product safety, Accessible in [online-product-safety-guidelines-report_final.pdf \(consumersinternational.org\)](https://consumersinternational.org/online-product-safety-guidelines-report-final.pdf). (25.04.2022).

⁶⁵ See in Latinamerica an expansion of 60% in 2020: “retail ecommerce in Latin America has experienced unprecedented growth. In 2020 alone, **sales rose more than 60%, surpassing \$100 billion**—three years earlier than we had predicted in our Q4 2019 forecast—due to COVID-19 lockdown measures.” Accessible in <https://www.emarketer.com/content/third-party-digital-marketplace-latin-america>

⁶⁶ CHUNG, Alex; YU, Ying. Consumer trust in the digital economy: The case for online dispute resolution, in *UNCTAD Research Papers* 72, p. 7, accessible in https://unctad.org/system/files/official-document/serp-2021d15_en.pdf

Christine Riefa, in an article about the impacts of the COVID-19 pandemic, argues that consumer law enforcement is not effective, if not prevent consumers harms (and only remedy it). She calls “to review the way consumer law has so far approached markets and their regulation. It argues that now, more than ever, consumer law needs to protect the vulnerable and public enforcement mechanisms must be able to prevent harm as much as possible rather than repair it. Fairness should be by design and not something that is offered to consumers simply as a remedy”⁶⁷.

In 2005, the same author has criticized Article 15-17 of the Brussels Regulation (44/2001) and the notion of ‘directed activity’ (also present at the Argentinean consumer protection rule) and had concluded, that the protection granted by the Brussel -and later Brussel I bis regulation- were not sufficient.⁶⁸ The UNGCP (General Assembly resolution 70/186 of 22 December 2015)⁶⁹ recommend a fair, efficient, transparent and impartial mechanism for dealing with consumer complaints, including for cross-border cases.⁷⁰ But also prevention of harms⁷¹ and commercial good practices (Guideline 11).

2.The concentration in digital Marketplaces and Big Techs

The concentration of the digital marketplaces is big. Many countries call for new regimes on competition, data and consumer protection for Tech giants.⁷² In Europe the platform economies have trough the attention of the EU.⁷³ Not only in e-commerce but also in the digital markets (apps and big techs), in social media and in digital consumer time of use, as these UK charter shows:

⁶⁷ RIEFA, Christine. Coronavirus as a catalyst to transform consumer policy and enforcement. *Journal of consumer policy*, v. 43, n. 3, p. 451-461, 2020, p.451.

⁶⁸ WILD, Charles; WEINSTEIN, Stuart; RIEFA, Christine. Council Regulation (EC) 44/2001 and Internet Consumer Contracts: Some Thoughts on Article 15 and the Futility of Applying 'In the Box' Conflict of LawRules to the 'Out of the Box'... in *International Review of Law Computers & Technology*, vol. 19, n. 1, pages 13-21, March 2005.

⁶⁹ See [The United Nations Guidelines for Consumer Protection \(UNGCP\)](#) .

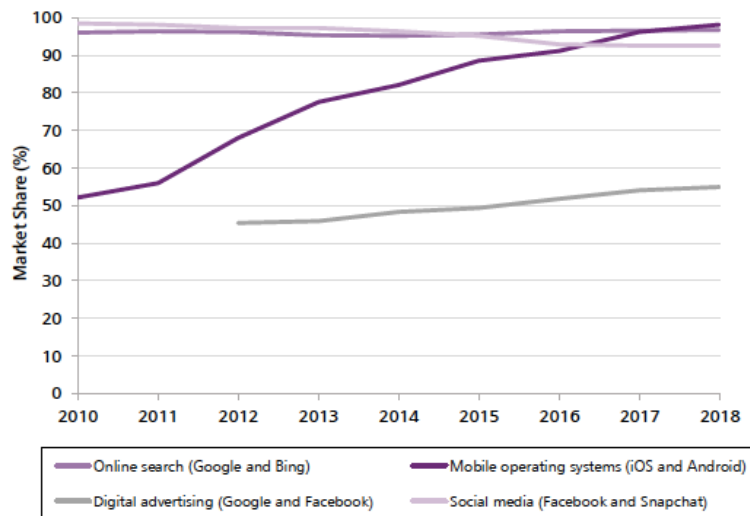
⁷⁰ See Riefa, C., & Saintier, S. (2020). The way forward: for an ‘inclusive’ access to justice to protect vulnerable consumers. In C. Riefa & S. Saintier (Eds.), *Vulnerable Consumers and the Law: Vulnerable Consumers and Access to Justice* (p. forthcoming). London: Routledge.

⁷¹ See SICILIANI, P., RIEFA, C., & GAMPER, H. (2019). *Consumer theories of harm – An economic approach to consumer law enforcement and policy making*. Oxford: Hart Publishing.

⁷² See News about the Digital Markets Unit from the UK that will be set up to introduce and enforce a new code to govern the behaviour of platforms that currently dominate the market, such as Google and Facebook, available in <https://www.gov.uk/government/news/new-competition-regime-for-tech-giants-to-give-consumers-more-choice-and-control-over-their-data-and-ensure-businesses-are-fairly-treated>

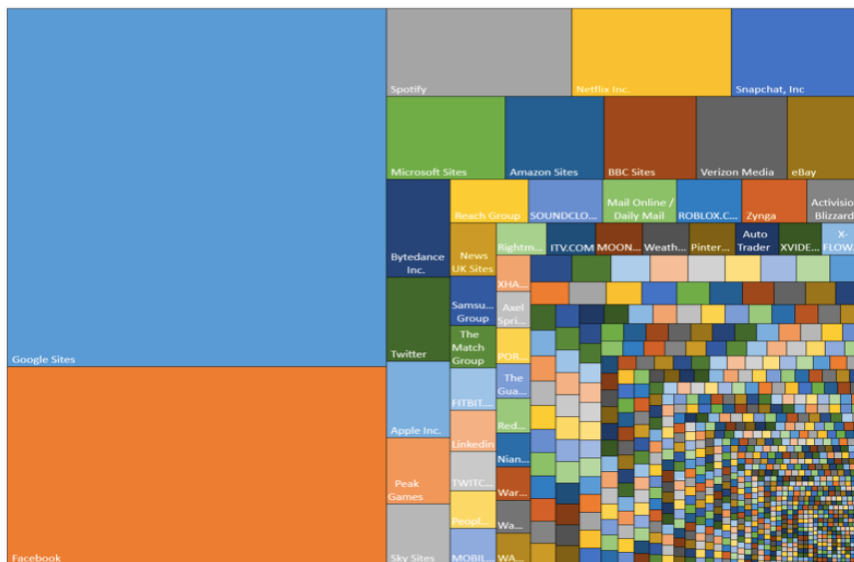
⁷³⁷³ See EUROPEAN COMMISSION. Flash Eurobarometer 438 Survey: The use of collaborative platforms - Briefing note. 2016. Disponível em <https://europa.eu/eurobarometer/surveys/detail/2112>. Acesso em 13.11.2021.

Chart 1.B: Combined indicative market shares of current leading two companies in selected UK digital markets



Sources: StatCounter,²¹ Comscore,²² and eMarketer and company reports²³

Figure 2.2: UK consumer time spent on top 1000 online properties



Source: Comscore MMX Multi-Platform, Total Digital Population, Desktop aged 6+, Mobile aged 13+, February 2020, UK.

Notes: Top 1000 properties account for 83% of total user time spent online.

* Where 'Google Sites' includes all Google owned properties eg YouTube and Google Search.

†Where 'Facebook' includes Facebook, Instagram and WhatsApp.

In Latin America retails, for example, e-commerce there are 7 big players, and one (Mercado Libre) has more than half of the market.⁷⁴ Not only the digital market itself is concentrate, Serving as a sort of “**virtual mall**,” marketplace websites are popular among Latin-American consumers, the so-called third-party marketplaces, because they are platforms for micro-small and medium enterprises to sell national but also cross-border.⁷⁵

As *Consumers International* states, **online marketplaces create a particular challenge for regulators**: “By offering consumers access to a range of sellers through an

⁷⁴ See CUERVELS, M. 7 Key Players Driving the Region’s Ecommerce Growth, in <https://www.emarketer.com/content/latin-america-retail-e-commerce-update> (14.01.2022).

⁷⁵ See <https://www.emarketer.com/content/third-party-digital-marketplace-latin-america> (14.01.22).

online platform and providing services such as payment services, review hosting and fulfilment, marketplaces have created a new model of retail that escapes the traditional definitions that have been used in regulation. The ability of sellers from other countries to use platforms to sell their products in new markets can also make it difficult to enforce product safety regulation.”⁷⁶

If this concentration can be an ally for consumer protection is not yet to see, but the ILA’s Committee believes in the positive role of voluntary standards.

3. The positive role which voluntary standards, good practices and principles can play to consumer protection

Since 2018, the UNCTAD’s Project COMPAL use Practical Guides to help enterprises to implement consumer protection rules (and also competition rules) with great success.⁷⁷ Julie Hunters highlights the value of pragmatic guidance through standards, special to vulnerable consumers and in the digital world: “Digital is one area where consumers may be particularly vulnerable, due to age, inexperience or lack of technical knowledge, so it is critical that organisations develop ethical and responsible digital products” and services.

Voluntary standards, by defining good practice and providing detailed guidance for organisations and business through their commitment to follow the standard, play a crucial role in empowering and protecting consumers. Voluntary standards present a unique opportunity as a tool to facilitate change and achieve positive outcomes for consumers (also in vulnerable situations) as Hunters state “by drawing together experts from relevant stakeholder groups – including consumers – to agree on good practice; encouraging organisations to think about their objectives, against which they can assess their current service provision; and providing pragmatic solutions to help them achieve their goals.”⁷⁸

⁷⁶ So Consumers International, p. 4 accessible in [online-product-safety-guidelines-report_final.pdf](https://www.consumersinternational.org/publications/online-product-safety-guidelines-report-final.pdf) ([consumersinternational.org](https://www.consumersinternational.org)) (25.04.2022).

⁷⁷ See COMPAL. (2018b). *Guía para facilitar al sector empresarial el cumplimiento legal de sus obligaciones y derechos en materia del marco jurídico de protección al consumidor y defensa de la competencia económica (Colombia)*. Geneva. And COMPAL. (2018c). *Manual preliminar para facilitar al sector empresarial el cumplimiento legal de sus obligaciones y derechos en materia del marco jurídico de protección al consumidor y defensa de la competencia económica (Perú)*. Geneva.

⁷⁸ HUNTER, Julie. The role of voluntary standards in improving outcomes for consumers in vulnerable situations in RIEFA, Christine; SAINTIER, Séverine (Eds.). *Vulnerable Consumers and the Law-Consumer Protection and Access to Justice*. New York, Routledge, 2021, p. 137. Also in pg. 138: “Digital is one area where consumers may be particularly vulnerable, due to age, inexperience or lack of technical knowledge, so it is critical that organisations develop ethical and responsible digital products, which is not always the case. In 2016 and 2017 research by the Norwegian Consumer Council (NCC) uncovered serious flaws in internet connected products aimed at children – including dolls and smartwatches – which breached basic consumer rights, privacy and security. Tests showed how strangers could control these devices, allowing them to access the child’s location and personal details, listen in on conversations and even contact the children directly, without the parents’ knowledge. ANEC and BEUC19 (the umbrella group for national, independent consumer organisations in Europe) joined forces with the NCC in its

While the role of the State through domestic rules and international agreements is crucial to limit the expansion and potential abuses against consumers, consumer protection needs also to conceive strategies to empower societal actors to directly co-create, influence and participate in the development and improvement of different transnational legal orderings (public national and international orderings, hard and soft laws, supranational orderings from the economic cooperation processes and blocs, voluntary international standards, like ISO, Codex Alimentarius etc., voluntary principles, like global compact and also private global regimes of the big enterprises. To make cross-border e-commerce work also for consumers all forces should be reunited.⁷⁹

The role of soft law cannot be dismissed today.⁸⁰ As Izaguerri Vila state: “In a context where the challenges to consumer protection are increasingly cross-border, if not global, it is important to reflect on the new paradigm of international consumer protection at the United Nations based on soft law and to analyse the legal nature of its substantive provisions (the Guidelines), the nature of inter-state cross-border cooperation and the international institutional machinery. This article will propose some reflections on the shape that global governance on consumer protection at the United Nations may take in the years to come.”⁸¹

As professor Dupuy states “soft law is not merely a new term for an old (customary) process; it is both a sign and product of the permanent state of multilateral cooperation and competition among the heterogeneous members of the contemporary world community. The existence of “soft” law compels us to re-evaluate the general international law-making process and, in doing so, illuminates the difficulty of explaining this phenomenon by referring solely to the classical theory of formal sources of public international law”.⁸² Recommended best practices are useful tools to engage responsible business and global corporations.⁸³ Also Principles are used, including by international

subsequent #ToyFail campaign to call on better protection for consumers in the digital world. In response to such concerns, BSI’s CPIN proposed a new international standard through ISO COPOLCO20 on Privacy by Design, which was approved.”

⁷⁹ See CONSUMERS International: Making cross-border e-commerce work for consumers? *eTrade for all*. c2019. Accessible in: <<https://etradeforall.org/making-cross-border-e-commerce-work-consumers>

⁸⁰ See LIMA MARQUES, Claudia. Por um pacto empresarial do MERCOSUL para a proteção do consumidor no meio digital: Origens e finalidades, in MARQUES, Cláudia Lima; VIEIRA, Luciane Klein; BAROCELLI, Sergio Sebastián (Org.). Los 30 años del MERCOSUR: avances, retrocesos y desafíos en materia de protección al consumidor. Buenos Aires: IJ Editores, 2021. Accessible in [Por um pacto empresarial do MERCOSUL para a proteção do consumidor no meio digital: Origens e finalidades \(ijeditores.com\)](https://ijeditores.com) (10.02.22)

⁸¹ IZAGUERRI VILA. A. International Consumer Protection at the United Nations: Towards Global Governance?, in *Journal of Consumer Policy* (2020) 43:91-103, p.92.

⁸² DUPUY, Pierre-Marie. Soft Law and the International Law of Environment. *Michigan Journal International Law*, issue 2, v. 12, 1990. Accessible in <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1648&context=mjil> (14.01.2022).

⁸³ See AMERICAN BAR ASSOCIATION (ABA). Task Force on e-commerce and ADR recommended best practices for online dispute resolution service providers: <https://www.americanbar.org/content/dam/aba/migrated/dispute/documents/BestPracticesFinal12802.pdf> .

organizations like ASADIP.⁸⁴ Including to combat discrimination and abusive practices in the market,⁸⁵ or to assure fair access to justice.⁸⁶

Consumers International have issued new soft law about product safety online: “The digital marketplace is inherently global, therefore requires cross-border solutions and co-operation to deliver consumer trust in the international digital marketplace. The Consumers International survey also found overall global co-operation is low: less than half of respondents said that their countries co-operate internationally on enforcement cases (38%) and development of product safety regulations (27%).”⁸⁷ There is a lack of cross-border cooperation and guidelines for responsible digital trade to consumers.

With this in mind, the ILA’s Committee on International Protection of Consumers developed a ‘**CONSUMER GLOBAL COMPACT IN THE DIGITAL ECONOMY**’. All Committee Members have helped to develop this Draft Resolution, after a basis text made by the Chair Claudia Lima Marques, but we want to highlight the engaged help done by the Rapporteur Wei Dan, and the following members: Thierry Bourgoignie, Gail Pearson, Yu Ying, Anabela Gonçalves, Ezequiel Mendieta and Rui Dias. We also want to thank the PhD Candidate Maria Luiza Targa (UFRGS, Porto Alegre, Brazil) for her help at the web meetings in November 2021. This is our contribution to enhance the consumer protection in global e-commerce. The Text, objective and justification is followed:

INTERIM RESOLUTION suggested by the Committee on International Protection of Consumers-ILA

OBJECTIVE: Engaging Big Techs and E-commerce Global Players in a voluntarily set of standards that supports companies to align their activities with fundamental responsibilities in the areas of consumer rights, data protection, new marketing, redress and enforcement of consumer rights

JUSTIFICATION- Considering the expansion of the digital economy and the new global organization of digital big techs and digital global corporations, sharing platforms

⁸⁴ See ASOCIACIÓN AMERICANA DE DERECHO INTERNACIONAL PRIVADO (ASADIP). *Princípios ASADIP: sobre o acesso transnacional à justiça (TRANSJUS)*. ASADIP, [2021?]. Accessible: www.asadip.org/g/v2/wp-content/uploads/2018/08/ASADIP-TRANSJUS-PT-FINAL18.pdf.

⁸⁵ See STIGLIZ, Gabriel; SAHIÁN, José. El principio antidiscriminatorio en el Derecho del Consumidor. *Revista de Direito do Consumidor*, São Paulo, v. 136, p. 121-144, jul./ago. 2021, And SCHULTE-NÖLKE, Hans et al. Discrimination of consumers in the digital single market: study. [IP/A/IMCO/ST/2013-03]. [Brussels]: European Union, 2013, Accessible in https://www.europarl.europa.eu/meetdocs/2014_2019/documents/imco/dv/discrim_consumers/discrim_consumers_en.pdf

⁸⁶ See UNITED NATIONS. United Nations Commission on International Trade Law (UNCITRAL). Online Dispute Resolution: on-line Resources. Accessible in https://uncitral.un.org/en/library/online_resources/online_dispute_resolution

⁸⁷ Consumers International guideline for online product safety, Accessible in [online-product-safety-guidelines-report final.pdf \(consumersinternational.org\)](https://consumersinternational.org/online-product-safety-guidelines-report-final.pdf). (25.04.2022).

and chains of providers, organizing marketplaces to reach consumers, reproducing technologies and practices worldwide it is possible to ask these responsible businesses to voluntarily join a principles-based approach to doing business globally. This ILA's 'Consumer Global Compact' aims to enhance the culture of fairness and cooperation toward digital and global consumers, as the UN Global Compact has done. This means operating and designing business solutions which, at least, meet fundamental responsibilities towards consumers and their personal data, providing models to all small and medium business that work in the marketplace. The original ten principles of the UN Global Compact cover human rights, labor, environment, and anti-corruption; they helped to establish a culture of integrity worldwide.

Now, following the Covid-19 pandemic, the recovery calls for the need to rethink strategies and policies to engage the global business players in enhancing consumer confidence and a new level of doing digital business globally.

Base of this new voluntary statement about corporate sustainability, ethic and ESGs were: The United Nations Global Compact Principles, the UN-Guidelines on Consumer Protection 2015, the ILA RESOLUTION 4/2012- Sofia Statement on the Development of International Principles of Consumer Protection, the OAS Principles on data protection 2021, the Council of Europe Technical study on online dispute resolution mechanisms 2018, the UNCITRAL Technical Notes on Online Dispute Resolution, the OECD Recommendation of the Council on Consumer Dispute Resolution and Redress, the OECD Guidelines for Multinational Enterprises and Due Diligence Guidance for Responsible Business Conduct. Also, EU and Mercosur rules have inspired this text, aiming to implement due diligence processes and corporate responsibility policies to respect consumer rights, data protection and to facilitate consumer redress and access to justice, enhancing confidence amongst consumers.

Therefore, the ILA's Committee on International Protection of Consumers believe it is time to suggest a 'Consumer Global Compact' in the digital economy. The Principles aim to make up for the 'new vulnerabilities' that global consumers are experiencing in the digital economy and create a voluntary common ground to the worldwide activities in consumer e-commerce, platforms and data driven companies, helping the compliance and enforceability of consumers rights worldwide.

'CONSUMER GLOBAL COMPACT IN THE DIGITAL ECONOMY'

Aiming to raise awareness among responsible business of the digital marketplaces and e-commerce, especially those involved in cross-border B2C transactions, that this set of voluntary standards can support digital companies to align their activities with fundamental responsibilities in the areas of consumer rights, data protection, new marketing, redress and enforcement of consumer rights.

Recalling UN General Assembly resolution 70/186 of 22 December 2015 on consumer protection adopting the revised United Nations Guidelines for Consumer Protection, and

the ILA RESOLUTION 4/2012- Sofia Statement on the Development of International Principles of Consumer Protection;

Recognizing the role of voluntary standards to enhance the culture of fairness and cooperation toward digital and global consumers, and recognizing that appropriate business practices can improve consumer confidence and provide more favourable conditions for sustainable online trade worldwide;

Noting the working of the work of the Committee on International Protection of Consumers from 2019 to 2022 and its Interim Report 2022 present at the Lisbon Biannual Congress;

Recognizing that consumers everywhere may benefit when consumer rights are respected, cross-border distribution of unsafe consumer products is reduced, data protection and enforcement of consumer rights are voluntarily developed by design;

And recognizing the special vulnerability of consumers in the digital economy, especially in cross-border transactions, states the follow principles called 'ILA's Consumer Global Compact in the digital economy'.

Principles of the ILA's Consumer Global Compact in the digital economy

The Principles are:

Consumer Rights

1. Business should support and respect consumer rights, especially in compliance with the UNGCP (UN-Guidelines on Consumer Protection, 2015) and grant consumers using electronic commerce and new technology applications a level of protection that is no less that afforded in other forms of commerce, avoiding all kind of consumer discrimination.
2. Business should uphold freedom of choice and provide the consumer with complete and useful information on time and in an understandable manner.
3. Business should develop a unified standard to deal with cross-border consumer transactions and not deprive consumers using e-commerce in cross-border transaction from the most protective provisions afforded to them by the mandatory applicable laws.
4. Business should make sure that they are not complicit of frauds or violations of human rights and environmental rights in the marketplace or supply chains.

Data Protection and New Marketing

5. Business should control and share responsibility of the behavior of intermediaries, employees, influencers, and the addressable marketing personnel.
6. Business should ensure by design, data protection and AI fairness. The processing of the consumers' personal data should be done lawfully, fairly and in a transparent manner,

respecting the principles of purpose limitation, data minimization, data accuracy, storage limitation, integrity and confidentiality and accountability, and guaranteeing data subject rights.

7. Business should undertake initiatives to promote greater data protection and consumer privacy. It should be assured a fair algorithmic treatment, that does not make unfair discriminations; algorithmic transparency; and the right of the consumer to contest an algorithmic decision.

8. Business should consider children and adolescents' weakness, aged persons and other vulnerable consumers and not impose to them burdens or constraints.

Redress and Enforcement Rights

9. Business and other stakeholders should work together with national enforcement agencies and seek for consensual and amicable consumer dispute resolution. Business should engage in multiple-stakeholders' discussions and supports international cooperation for cross-border dispute resolution. The introduction of due diligence frameworks would increase the levels of responsible business conduct and international cooperation, enhance information and transparency, increase sustainable development, and enhance confidence amongst consumers.

10. Business should encourage accessible consumer ODR platforms and channels for consumer redress including cross-borders disputes.

11. Business should ensure the compliance of international standards by the ADR/ODR and other services and platforms for amicable resolution of consumer disputes they use or recommend, fostering the development of fair, transparent, accessible, informed, impartial, free of charge or inexpensive for consumer and expeditious solutions for cross border cases.

12. Business should ensure that consumers are free to access voluntarily dispute resolution and redress mechanisms, as well as judicial or administrative redress mechanism for consumers acting individually or collectively, and to benefit from the positive outcomes of such procedures. The ADR/ODR mechanism should be mandatory for business and voluntary for consumers and the decision, if not consensual, should be binding only for business.

RÉSOLUTION INTERIMAIRE suggérée par le Comité de la Protection Internationale des Consommateurs - ILA

Objectif : Engager les grandes entreprises technologiques et les acteurs mondiaux du commerce électronique dans un ensemble de standards volontaires qui aide les entreprises à aligner leurs activités sur les responsabilités fondamentales dans les domaines des droits des consommateurs, protection des données, nouveau marketing, droits de réparation et d'exécution

Justification - Compte tenu de l'expansion de l'économie numérique et de la nouvelle organisation mondiale des *big techs* numériques et des entreprises globales numériques, partageant des plateformes et des chaînes de professionnels, organisant des marchés pour atteindre les consommateurs, reproduisant des technologies et des pratiques dans le monde entier, il est possible de demander à ces entreprises responsables d'adhérer volontairement à une approche basée sur des principes pour faire des affaires au niveau global. Le "Pacte mondial des consommateurs de la ILA" vise à renforcer la culture de l'équité et de la coopération envers les consommateurs digitaux et mondiaux. Cela implique d'exploiter et de concevoir des solutions commerciales qui, au minimum, répondent aux responsabilités fondamentales envers les consommateurs et leurs données personnelles, en fournissant des modèles à toutes les petites et moyennes entreprises qui travaillent sur le marché. Les dix principes originaux du Pacte Mondial des Nations Unies concernent les droits humains, le travail, l'environnement et la lutte contre la corruption ; ils contribuent à instaurer une culture de l'intégrité dans le monde entier. Aujourd'hui, à la suite de la pandémie de Covid-19, la récupération demande le besoin de repenser les stratégies et les politiques afin d'engager les acteurs commerciaux mondiaux à renforcer la confiance des consommateurs et à atteindre un nouveau niveau de commerce numérique au niveau mondial.

Les bases de ce ensemble de principes pour la durabilité des affaires de l'entreprises sont les Principes directeurs de l'ONU pour la protection du consommateur de 2015, la RÉSOLUTION 4/2012 de l'ILA - Déclaration de Sofia sur le développement de principes internationaux de protection des consommateurs, les Principes de l'OEA sur la protection des données de 2021, l'Étude Technique du Conseil de l'Europe sur le règlement des litiges en ligne de 2018, les Notes Techniques de la CNUDCI sur le règlement des litiges en ligne, la Recommandation du Conseil de l'OCDE sur le règlement des litiges de consommation et leur réparation, les Principes directeurs de l'OCDE pour les entreprises multinationales et le Guide OCDE sur le devoir de diligence pour une conduite responsable des entreprises ont inspiré ce document. Aussi les règles de la Union Européenne et du Mercosur visant à mettre en œuvre des procédures de diligence raisonnable et des politiques de responsabilité des entreprises afin de respecter les droits des consommateurs, la protection des données et de faciliter la réparation et l'accès à la justice des consommateurs, renforçant ainsi la confiance de ces derniers.

Par conséquent, le Comité pour la protection internationale des consommateurs de l'ILA estime qu'il est nécessaire de proposer un "Pacte mondial des consommateurs" dans l'économie numérique. Les principes visent à compenser les "nouvelles vulnérabilités" dont souffrent les consommateurs globaux dans l'économie numérique et à créer un espace commun volontaire pour les activités mondiales du commerce électronique, des plateformes et des entreprises exploitant des données, contribuant ainsi au respect et à l'application des droits des consommateurs autour du monde.

‘LE PACTE MONDIAL DU CONSOMMATEUR POUR L'ÉCONOMIE NUMÉRIQUE’

Visant à sensibiliser les professionnels responsables liés au marché numérique et au commerce électronique, en particulier ceux impliqués dans les opérations B2C transfrontalières, que cet ensemble de normes volontaires peut aider les entreprises numériques à aligner leurs activités sur les responsabilités fondamentales dans le domaine des droits des consommateurs, de la protection des données personnelles, du nouveau marketing, de la réparation et de la mise en œuvre des droits des consommateurs;

Rappelant la Résolution 70/186 de l'Assemblée Générale des Nations Unies, adoptée en 22 décembre 2015, relatif à la protection des consommateurs adoptant le texte révisé des principes directeurs pour la protection du consommateur des Nations Unies, et la Résolution 4/2012 de la Association de Droit International – ILA - Déclaration de Sofia pour le développement de principes internationaux de protection des consommateurs;

Reconnaissant le rôle des normes volontaires pour renforcer la culture de l'équité et de coopération envers les consommateurs numériques et globaux, et reconnaissant que des pratiques professionnelles appropriées peuvent améliorer la confiance des consommateurs et créer des conditions plus favorables pour un commerce électronique durable dans le monde;

Notant le fonctionnement des travaux du Comité de la Protection Internationale des Consommateurs de l'ILA de 2019 à 2022 et son Rapport intérimaire 2022 présenté au Congrès Biennal de Lisbonne ;

Reconnaissant que les consommateurs du monde entier peuvent se bénéficier du respect des droits de la protection des consommateurs, de la réduction de la distribution transfrontalière de produits dangereux, de la protection des données et de l'application des droits des consommateurs volontairement développés ;

Et *Compte tenu* de la vulnérabilité particulière des consommateurs dans l'économie numérique, notamment dans les affaires internationales, recommande les suivantes principes du nommée "Pacte Mondial des Consommateurs".

Principes du Pacte Mondial des Consommateurs de l'ILA pour l'Économie Numérique

Les principes sont les suivants :

Droits du consommateur

1. 1. Les professionnels doivent soutenir et respecter les droits des consommateurs, notamment en conformité avec les Principes directeurs des Nations Unies pour la protection du consommateur de 2015 et assurer aux consommateurs qui utilisent le commerce électronique et les applications des nouvelles technologies un niveau de protection qui n'est pas inférieur à celui accordé dans d'autres formes de commerce, en évitant toute sorte de discrimination à l'égard des consommateurs.

2. Les professionnels sont tenus de respecter la liberté de choix et de fournir au consommateur des informations complètes et utiles en temps voulu et de manière compréhensible.
3. Les professionnels doivent développer une norme unifiée pour régler les transactions transfrontalières des consommateurs et ne pas priver les consommateurs utilisant le commerce électronique dans le cadre de transactions transfrontalières des dispositions les plus protectrices qui leur sont offertes par les lois obligatoires applicables.
4. Les professionnels doivent s'assurer qu'ils ne sont pas complices de fraudes ou de violations des droits humains et environnementaux sur le marché ou dans les chaînes d'approvisionnement.

Protection des données et nouveau marketing

5. Les professionnels doivent contrôler et partager la responsabilité de la conduite des intermédiaires, des employés, des influenceurs et du personnel chargé du marketing adressable.
6. Les professionnels doivent assurer, dès la conception, la protection des données et la loyauté de l'IA. Le traitement des données à caractère personnel des consommateurs doit être effectué légalement, équitablement et de manière transparente, en respectant les principes de limitation des finalités, de minimisation des données, d'exactitude des données, de limitation de la conservation, d'intégrité et de confidentialité, et de responsabilité, et en garantissant les droits de l'intéressé.
7. Les professionnels doivent mettre en œuvre des initiatives visant à promouvoir une meilleure protection des données et de la vie privée des consommateurs. Il faut leur garantir un traitement algorithmique équitable, qui ne provoque pas de discriminations injustes ; la transparence algorithmique ; et le droit du consommateur de contester une décision algorithmique.
8. Les professionnels doivent prendre en considération la faiblesse des enfants et des adolescents, ainsi que des personnes âgées et des autres consommateurs vulnérables, et ne pas leur imposer de charges ou de contraintes.

Droits de réparation et d'exécution

9. Les professionnels et d'autres parties prenantes doivent collaborer avec les organismes nationaux chargés de l'exécution de la loi et rechercher des solutions consensuelles et à l'amiable aux conflits de consommation. Les professionnels doivent s'engager dans des discussions avec de multiples parties prenantes et soutenir la coopération internationale pour le règlement des litiges transfrontaliers. L'introduction de cadres de diligence raisonnable permettrait de développer la conduite professionnelle responsable et la coopération internationale, d'améliorer l'information et la transparence, de favoriser le développement durable et de renforcer la confiance des consommateurs.
10. Les professionnels doivent encourager l'accès à des plateformes de RLL- Règlement en ligne de litiges et à des mécanismes de recours pour les consommateurs, y compris pour les litiges transfrontaliers.

11. Les professionnels doivent assurer le respect des normes internationales par les MARL-Modes alternatifs de règlement des litiges / RLL et autres services et plateformes de résolution des conflits de consommation à l'amiable qu'ils utilisent ou recommandent, en favorisant le développement de solutions équitables, transparentes, accessibles, informées, impartiales, gratuites ou peu coûteuses pour les consommateurs et rapides pour les cas transfrontaliers.

12. Les professionnels doivent assurer que les consommateurs sont libres d'accéder volontairement aux mécanismes de règlement des litiges et de réparation, ainsi qu'aux mécanismes de recours judiciaires ou administratifs pour les consommateurs qui agissant individuellement ou collectivement, et de profiter des résultats positifs de ces procédures. Le mécanisme MARL/RLL doit être obligatoire pour les professionnels et volontaire pour les consommateurs et la décision, si elle n'est pas consensuelle, ne doit être contraignante que pour les professionnels.