



Manual on Consumer Protection





United Nations Conference on Trade and Development

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English only

Manual on Consumer Protection

Corrigendum

Chapter XV, section B

Replace section B with the text below.

B. The nature of utilities provision

The conventionally defined utility industries, i.e. suppliers of water, sanitation, energy and communication services, among others, present special challenges for consumer protection. Not only do these industries provide very basic and essential services, but they also have particular economic characteristics that often make it difficult to open their services up for competition. There have been attempts within the European Union to redefine them as “services of general economic interest” (SGEI) characterized by identifiable public policy goals, such as universal service, leaving member states to specify the services included in the definition.

The European Union approach is that SGEIs are subject to duties other than purely commercial ones, even though they may be run with a substantial commercial element and usually in return for payment. Such duties are summed up by the concept of public service obligations. A European Commission Eurostat publication explained in 2007:

SGEIs can be defined as collective or social goods in the sense that they are different from ordinary services ... Public authorities can lay down a number of specific obligations for the provider. The fulfilment of these obligations may trigger the granting of special or exclusive rights, or the provision for specific funding mechanisms. The classic case is the universal service obligation i.e. the obligation to provide a certain service throughout the territory at affordable tariffs and on similar quality conditions, irrespective of the profitability of individual operations.³⁰⁸

While the SGEI nomenclature has not spread much further afield, the concept remains widely accepted.

Most utility industries rely on some sort of network to deliver their services. The economics of these fixed networks mean that it is cheaper for a single firm to supply an entire market than for several firms to do so. Once a distribution network is in place, it makes no economic sense to duplicate it by laying a second connection between the same points. The “natural

³⁰⁸ Eurostat, 2007, *Consumers in Europe: Facts and Figures on Services of General Interest*.
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monopoly” produced by these distribution systems leaves consumers “tied in” to particular supply companies.

However, this assumption is less valid now than a generation ago. Many aspects of natural monopoly are dissolving and since the move of telecommunications to mobile individualized service, it has become a competitive service with fewer network effects as its relatively inexpensive capital assets can overlap in the same territory. There are new issues about internet capacity which could recreate network problems in the future, and there remain issues of spectrum availability which are not explored here. But for most purposes, telephone services are competitive and subject to individual contracts which require supervision of a “fair trading” nature, checking for transparency, unfair contract terms and anti-competitive practices such as “lock in” contracts. Given the above, in this chapter we concentrate on water/sanitation and electricity.



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Corrigendum

1. Page 80, paragraph 1

For (guidelines 36–43) read (Guidelines, para. 36)

For guideline 44 read paragraph 37 of the Guidelines

2. Page 84, paragraph 4

For distributing damages read distributing compensation for damages



Manual on Consumer Protection**Corrigendum****1. Chapter XIII, box 15**

Replace box 15 with the box below.

Box 15**From safe harbour to privacy shield**

Among the 34 OECD member countries, 32 had implemented comprehensive data protection laws as of early 2016. At the time of writing, the Turkish parliament has passed a data protection bill that is meant to harmonize the Turkish regime with that of the European Union. That will leave the United States of America as the only exception (it uses a sectoral approach to data protection rather than a single law).

The European Commission's Directive 95/46 on Data Protection, which took effect in 1998, prohibits the transfer of personal data to non-European Union countries that do not meet the European Union's "adequacy" standard for privacy protection. The European Union requires other receiving countries to create independent government data protection agencies and to register databases with those agencies. In order to bridge the gap between their respective jurisdictions, in 2000 the United States of America and the European Union agreed the "Safe Harbour" framework, that certified businesses in the United States of America as meeting European Union requirements. Breach of the rules could trigger intervention by the United States of America FTC, which could in turn result in companies being struck off the approved list held by the United States of America Department of Commerce.

After a complaint from a European Union citizen that his data was not protected to European Union standards upon transfer to the United States of America, the European Court of Justice (ECJ) found in October 2015 that the presumption of adequacy under Safe Harbour principles did not prevent European Union citizens from challenging the initial 2000 Decision 520 on the basis of enforcing their personal rights and freedoms. Furthermore, the court actually invalidated the Safe Harbour adequacy decision which was found to have been adopted without sufficient limits to the access to personal data by governmental authorities. The court found that Safe Harbour did not ensure processing that was "strictly necessary" and "proportionate" as demanded by the European Union Data Protection Directive. As a result, Safe Harbour members no longer enjoy a presumption of adequacy that allowed for the movement of data from the European Union to the United States of America.

One important result of the case was the renegotiation of the Safe Harbour agreement, to be known henceforward as the European Union-United States Privacy Shield in February 2016. The new arrangement included a commitment to stronger enforcement and monitoring, including a new ombudsman and new limitations and conditions on surveillance. In April 2016, however, the grouping of European Data Protection authorities pointed to several deficiencies in the newly negotiated Privacy Shield despite it being seen as an improvement over the preceding Safe Harbour framework. The European Union's advisory "Article 29 Working Party" asked for the European Commission to resolve their concerns in order to ensure that "the protection offered by the Privacy Shield is indeed essentially equivalent to that of the European Union".²⁷³ Finally, following an "adequacy decision" by the European Commission regarding protection in the United States of America, the new Privacy Shield took effect on 1 August 2016. The Transatlantic Consumer Dialogue, whose members are consumer organizations from the United States of America and the European Union and have been persistent critics of Safe Harbour and the new Privacy Shield, has urged a relatively simple move which is that the United States of America could "become a full party, without undue reservations, to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108) and its Additional Protocol regarding supervisory authorities and trans-border data flows (CETS No. 181), which are both open to non-European states and provide the widest internationally agreed data protection standards".²⁷⁴

Sources: UNCTAD, 2016, *Study on Data Protection and International Data Flows*; Trans-Atlantic Consumer Dialogue, Resolution on the European Union Privacy shield proposal, 7 April 2016; Susan Aaronson, The digital trade imbalance and its implications for Internet governance; Global Commission on Internet Governance, Chatham House, Paper 25, 2016; EC Press Release FAQs, 12 July 2016.

²⁷³ Article 29, Data Protection Working Party, 16/EN 238 Opinion 1/2016 on the European Union–United States Privacy Shield Draft Adequacy Decision, 13 April 2016, available at http://ec.europa.eu/justice/data-protection/index_en.htm.

²⁷⁴ Transatlantic Consumer Dialogue, 2016, *Resolution on the EU–US Privacy Shield Proposal*, 7 April.

2. Chapter XIII, box 16, third bullet

For the existing text *substitute*

Trust networks: simplifying sharing choices through the creation of a network of accredited, trusted providers who commit to using consumer data on individual consumers' terms.^a

^a Citizens Advice, 2015, *Personal Data Empowerment: Time for a Fairer Data Deal?*

Available at

<https://www.citizensadvice.org.uk/Global/Public/Corporate%20content/Publications/Personal%20data%20empowerment%20report.pdf>.

3. Chapter XIV, box 19, Microcredit, first paragraph, last line

For informal settlements.¹¹ *read* informal settlements.²⁸⁵

²⁸⁵ *The Global Urbanist*, 2010, Merry-go-round microfinance keeps slum residents fed in Kibera (13 April); *Kenya English News*, 2012, *Merry-go-rounds become powerful investment tools in Kenya* (16 June).

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Preface

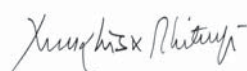
The UNCTAD Manual on Consumer Protection 2017 edition is the first comprehensive international reference in this field, aiming to support developing countries and economies in transition in their choice of policies and providing practical tools to assist policymakers in enhancing capacities while implementing the recently revised United Nations Guidelines for Consumer Protection.

UNCTAD, as the focal point for consumer protection issues within the United Nations system, is fully committed to promoting the guidelines and encouraging interested Member States to create awareness of the various ways in which they can promote consumer protection in the provision of public and private goods and services in collaboration with businesses and civil society. This is all the more important since consumer protection is not homogenous around the world. Indeed, as the General Assembly noted, “although significant progress has been achieved with respect to the protection of consumers at the normative level since the adoption of the guidelines in 1985, such progress has not been consistently translated into more effective and better-coordinated protection efforts in all countries and across all areas of commerce”. With this manual, UNCTAD is contributing to spreading good practices and enhancing the capacities of developing countries and economies in transition to step up the protection of their consumers.

The twenty-first century consumer is a global consumer. Today’s consumers have the largest choice of goods and services, while the digital revolution has propelled them to the forefront of international trade. This also comes with greater risks, such as unsafe products, unfair business practices, inadequate dispute resolution and redress, breaches to consumer data privacy and lack of coordinated action among Member States. More than ever, the welfare of any consumer is affected by the welfare of all consumers around the world and we are witnessing the eve of global consumer protection.

Consumers need to be empowered for them to play their role as agents for change in achieving the Sustainable Development Goals. This can only happen when appropriate laws, policies and institutions are in place and all stakeholders, particularly businesses and consumer groups, participate in upholding consumer protection in the marketplace.

I commend this manual as an important tool for all those seeking to increase the welfare of consumers.



Mukhisa Kituyi

Secretary-General of UNCTAD

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