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Evaluation of the E-Consumer Protection: The EU Experience

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ABSTRACT

The use of e-commerce has significantly increased. However, the nature of practicing e-commerce differs from the nature of practicing traditional commerce. Differences such as the absence of direct interaction between seller and buyer, the absence of direct observation of the sold item by the customer, and cross-border transactions in e-commerce can result in many legal challenges. These challenges can extend to adequate consumer protection and impact consumer confidence in e-commerce. This paper critically evaluates the legal protection of e-consumers in Europe. It is argued that although the EU has successfully achieved its goal of establishing a common e-commerce market, its success in establishing an effective e-consumer protection framework and enhancing consumer confidence is still a concern.

KEYWORDS: Electronic commerce, Markets, Consumers, Legislation, European Union.

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Evaluación de la protección del consumidor electrónico: La experiencia de la Unión Europea

RESUMEN

El uso del comercio electrónico ha aumentado significativamente. Sin embargo, la naturaleza de la práctica del comercio electrónico difiere de la naturaleza de la práctica del comercio tradicional. Diferencias como la ausencia de interacción directa entre el vendedor y el comprador, la ausencia de observación directa del artículo vendido por parte del cliente y las transacciones transfronterizas en el comercio electrónico pueden dar lugar a muchos desafíos legales. Estos desafíos pueden extenderse a la protección adecuada del consumidor y afectar la confianza del consumidor en el comercio electrónico. Este documento evalúa críticamente la protección legal de los consumidores electrónicos en Europa. Se sostiene que, si bien la UE ha logrado con éxito su objetivo de establecer un mercado común de comercio electrónico, su éxito en el establecimiento de un marco eficaz de protección del consumidor electrónico y la mejora de la confianza del consumidor sigue siendo motivo de preocupación.

PALABRAS CLAVE: Comercio electrónico, Mercado, Consumidor, Legislación, Unión Europea.

Introducción

The use of e-commerce has significantly increased. However, the nature of practicing e-commerce differs from the nature of practicing traditional commerce. Differences such as the absence of direct interaction between seller and buyer, the absence of direct observation of the sold item by the customer, and cross-border transactions in e-commerce can result in many legal challenges. These challenges can extend to adequate consumer protection and impact consumer confidence in e-commerce. To critically evaluate the legal protection of e-consumers in Europe, the two concepts of evolution should be defined. E-commerce can be defined as 'any form of business transaction in which the parties interact electronically rather than by physical or direct physical contact (Alboukrek, 2003). Although consumer protection has a changeable and broad definition, the traditional definition of it is 'shielding consumers from harm that might be done to them'(McKee, 1999).

Although the EU has successfully achieved its goal of establishing a common e-commerce market between different EU states, and this market has become the second-largest e-market after the US (Saraf et al., 2013), the EU's success in establishing an effective e-consumer protection framework and enhancing consumer confidence is still questionable. This is due to three issues: firstly, the level of unity in consumer protection between member states; secondly, the lack of sufficient dispute-resolution mechanisms; and thirdly, the need for cross-border enforcement. Therefore, this article will critically evaluate the impacts of these issues on EU e-consumer protection and confidence.

The first section of this paper starts by generally highlighting the advantage of harmonisation, and then explaining whether the EU should adopt an approach of full or minimum harmonisation. After that, the paper points out that choosing one of these approaches is not the sole resolution, as some issues of consumer protection justify full harmonization, while others justify minimum harmonization. Finally, the first section analyses the suggestion of shifting to regulation from directives.

The second section of this paper highlights the need for sufficient alternative dispute resolution mechanisms to deal with cross-border online transactions and then illustrates the impacts of the new regulation for Online Dispute Resolution (ODR) for consumer disputes and the directive on Alternative Dispute Resolution (ADR) on the development of e-commerce. Finally, it highlights the need for sufficient enforcement cooperation mechanisms.

Although European Union (EU) Member States have adopted several directives regarding e-consumer protection, European e-consumers still enjoy different levels of consumer protection. This variation results from the transposition of directives into member states' national laws. For example, the Distance Selling Directive provides a minimum cancellation period of seven days, while Article 14 allows member states to obtain a higher level of protection. This approach results in differences in the cancellation period from seven working days in the UK and Spain while German consumers enjoy 14 days.

Therefore, harmonization can be considered an ongoing challenge to achieve the same level of protection in business-to-consumer (hereafter B2C) online transactions throughout Europe. This harmonization may result in legal certainty, which seems to play an important role in increasing consumer protection and confidence. Mak pointed out that legal certainty in e-commerce means that consumers can buy confidently from cross-border e-shops with

the belief that their rights will be protected (Mak, 2011). However, the current variation of e-consumer legal rules and their effectiveness between EU Member States can be an obstacle to achieving the desirable harmonization and legal certainty. As an example of this variation, some EU countries have strict national laws in favour of consumers, while other countries have weaker national laws in terms of consumer protection (Calliess, 2013). In addition, some countries enact exclusive legalization for e-commerce, while other countries regulate e-commerce through general consumer rules such as contract law (OECD, 2013); it is important to mention that national law has been criticized for being inappropriate to deal with e-commerce, as it may offer a lower legal certainty in consumer protection rules than international directives (Lehamann, 2001). The reason for this assumption is that national laws 'would result in legal harmonization at the lowest common denominator and equate to commercial law dumping' (Lehamann, 2001). However, this assumption might be not always true, as some national laws may offer a higher level of protection than directives, as in the German example above. Even so, it can be argued that the European Commission enacting one legal framework aims to ensure that consumers enjoy the same level of protection throughout Europe. This aim cannot be achieved unless directives include more adequate standards to ensure higher levels of consumer protection than private laws offer (Mak, 2010).

However, harmonization imposes mandatory legal protection for consumers as a weak party (Calliess, 2013) to ensure that national laws reach the required level of consumer protection (Reidenberg, 2001). These results increase consumer confidence as consumer rights are regulated by one well-defined regulatory legal framework (Mak, 2010). For instance, this approach of harmonizing consumer laws has achieved particularly important advantages; rights such as the right to exchange or return faulty products may not be achieved without harmonization, especially in those countries with a low level of consumer protection (Twigg-Flesner, 2010). In 2000, the Electronic Commerce Directive (E-Commerce Directive) was implemented to harmonize the principle of electronic contracts in EU Member States that aim to enhance the certainty and reliability of e-commerce contracts (Stylianou, 2008).

However, although it is widely accepted that harmonization has a considerable impact on providing legal certainty to B2C online transactions (Twigg-Flesner, 2010), a great

debate has occurred about whether the EU should implement full or minimum harmonization. On the one hand, those who argue for minimum harmonization claim that the aim of the current EU directives is not to provide full harmonization by enacting strict and specific rules, since minimum harmonization fulfills the nature of the EU legal framework with 'unity in diversity' (Mak, 2010). In addition, minimum harmonization leaves room for national laws to enact a higher level of protection than given in directives (Mak, 2009). However, the current approach of minimum harmonization has been criticized for not achieving the required consistency and coherence of consumer protection (Mak, 2009). For example, consumers, especially in EU countries with a high level of protection, lack confidence in receiving the same level of protection when engaging in cross-border transactions as minimum harmonization does not guarantee the same level of protection between member states (Loos, 2010).

In addition, the EC Consumer Law Compendium and Database Project shows that the current minimum harmonization of consumer protection could not ensure harmonization of consumer protection in Europe. This project analysed the interpretation of eight consumer directives in twenty-seven member states' national laws. This project shows the inappropriate implementation of directives, as it suffers from a lack of coherence and incompleteness that results from the disparity between national consumer laws (Twigg-Flesner, 2010). As a result of this project and other reports such as the 'Green Paper on the Review of the Consumer Acquis in 2007' that argue in favour of full harmonization, the EU shifted to maximal harmonization. However, Loos criticized the methodology of the Green Paper in obtaining its findings as it relied only on a questionnaire about whether the participants agreed with the pros of maximal harmonization. Loos argued that empirical research rather than such a questionnaire would lead to more reliable outcomes (Loos, 2010).

Moreover, some authors have concluded that minimum harmonization may not achieve the purpose of EU legislation, as they do not provide certainty to e-commerce. Bacon argued that minimum harmonization by itself may hardly achieve certainty due to the urgent need for a mutual recognition mechanism in areas that are not covered by any directives. Bacon also concluded that minimum harmonization without mutual recognition clauses may create more obstacles and difficulties, like the minimum harmonization in the cancellation period, which could impose not just inadequate protection but could create a

new obstacle (Calliess, 2013). However, the debate about the adoption of one kind of harmonization, either minimum or full, may not be the core discussion since adopting both kinds might be required.

It has been argued that the distinguishing element between full and minimum harmonization should consider the different aspects of e-commerce protection, which means some areas of e-commerce justify full harmonization while others do not. For instance, Howells and Schulze highlighted the differences between unfair commercial practices and contracts. The nature of unfair commercial practices, having clear rules about the required obligation, means it is appropriate to have maximal harmonization, whereas contracts should not be fully harmonized as their obligations are not straightforward (Howells and Schultze, 2009). In addition, regarding contract rules, there are some rules justifying full harmonization while others justify minimum. For example, in the Directive on Consumer Rights (2011/83/EC), the main information duets such as the identity of the contracted parties (Article 5(1)(b) pCRD) and the right of withdrawal are suitable for strict harmonization, while other information noted in Article 5 pCRD, such as prices or delivery, should be delegated to national authorities (Howells and Schultze, 2009).

Furthermore, the 'Green Paper on the Review of the Consumer Acquis' discussed whether full harmonization should be limited for cross-border transactions and distance selling or should cover all aspects of consumer transactions (Twigg-Flesner, 2010).

Nevertheless, the approach of adopting directives to harmonize consumer protection rules throughout Europe can be downplayed. Avoiding the ineffectiveness of such directives in harmonizing consumer protection in e-commerce cross-border transactions can be achieved by regulations instead of directives (Twigg-Flesner, 2011). Even though consumer directives in Europe could have a significant impact as a first step to 'the development of a European Contract Code or even of a European Civil Code' (Loos, 2010), the current unstable situation of EU directives is a leading concern. These concerns mainly appear due to two reasons: the language gap between member states and the issues uncovered by directives. The differences in implementing the directives occur due to the requirement to transpose directives into national laws, causing diversity between national laws (Osuji, 2011). For instance, differences in the translation of Article 5 pCRD occur between England and Germany.

According to the English version of this Article the trader has to give the necessary information 'if not already apparent from the context'. In the contract German version extends the trader's duties: he should disclose information that does not '*unmittelbar*' (directly) arise from the circumstances. (Howells and Schultze, 2009, p.322).

It can be seen from the example above that one particular rule can be applied differently in translation to another language. Thus, despite the aim of the directive to harmonize e-consumer laws throughout Europe, differences in levels of protection may occur. In addition, besides the language barrier, difficulty in determining some fundamental terms in directives can lead to confusion for national courts. This discretion might occur because national laws can freely determine the key concepts of the directives, as directives are not required to be implemented literally (Howells and Schultze, 2009). This discretion may occur due to limitations on the role of the European Court of Justice in clarifying the ambiguity of rules in directives. Therefore, the level of consumer protection may continue to vary between member states (Twigg-Flesner, 2010). However, to overcome the problem of interpretation, creating clear guidance to interpret the keywords of directives could be considered a satisfactory way to ensure consistency between member states. For instance, the Directive on Unfair Commercial Practices provides a clear explanation of its fundamental terms by giving a specific definition to ensure full implementation by national courts (Collins, 2010). Therefore, it can be seen that focusing on creating directives may not be the sole resolution; more consideration of the mechanism for the efficient implementation of directives should be taken into account. Furthermore, another obstacle facing directives is that there are some uncovered areas, which will be regulated by national laws such as 'pre-contractual information duties' (Twigg-Flesner, 2010) and issues regarding intangible digital content products (OECD, 2013), while the impacts of breaches of these rules are regulated by national laws (Loos, 2010). Therefore, 'it would still be necessary to identify the law applicable to the [consumer] contract – both the national law to be applied and the specific legal provisions of national law which would be relevant' (Twigg-Flesner, 2011). Such issues may significantly prevent the creation of a single framework and may negatively affect consumer confidence when engaging in cross-border online transactions. These shortcomings of directives raise the idea of the adoption of full harmonization of consumer protection by regulation. However, regulation can be considered as having advantages and disadvantages. The main advantage of regulation is

that it 'would establish the "single and coherent" set of legal rules' that would be easier to interpret and apply by national courts and would avoid the transposition of directives (Twigg-Flesner, 2012). The approach of adopting regulations can overcome the shortcomings of directives, as member states must adopt them instead of applying national laws. However, although such regulations can provide strict rules to unify the level of consumer protection throughout Europe, it might prevent national governments from enacting laws with a higher level of protection than that in the regulations. For instance, in the UK, the right of rejection of non-conforming products would be removed when the proposed Consumer Rights Directive (the Directive) is adopted (Collins, 2010). In addition, choosing a standard on which regulation will be based might be a challenging task. This is due to the differences in culture and legal systems between member states. For example, in terms of cultural differences, some Scandinavian countries have a lower level of consumer protection regarding banning pornography on the internet (Lehamnn, 2000). Such a standard might not comply with other member states' cultures. Thus, it should not be the European standard (Lehamnn, 2000). In terms of legal systems, the age of majority differs between member states, which might be an obstacle to unifying certain rules regarding banning websites from selling or advertising certain products to certain ages. Furthermore, Twigg-Flesner argues it has been argued that regulations should be limited to dealing only with cross-border transactions, which would mean that domestic transactions would not be covered by the regulations. However, to differentiate between non-domestic and domestic transactions is another obstacle facing regulations (Twigg-Flesner, 2012).

However, surprisingly, it has been argued that such variation of consumer rules has not been proven harmful to consumers in cross-border online transactions (European Commission, 2010). This assumption is supported by the European Commission, which conducted a report showing an increasing number of European citizens shopping online from the US, as it is more developed than the European market. For example, those who shop at US online shops are not afraid that their domestic credit cards will be refused, as happens with EU online shops (European Commission, 2010). Therefore, it can be seen that the differences between legal frameworks are not an essential factor in protecting consumers from cross-border online transactions (Loos, 2010). However, the discussion of whether harmonization is more appropriate for e-consumers than various national laws is a controversial issue. The rights and obligations of European e-consumers should be codified

and explained simply understandably and transparently, such as in an online platform similar to eYou Guide (European Commission, 2010). In addition, increasing e-consumer confidence with a single legal framework and a high level of consumer protection cannot be achieved without regulations.

In October 2011, the EU passed the Consumer Rights Directive (the Directive), which will come into force on 27 September 2026 (Gov UK, 2013). The Directive replaces four existing directives: the Doorstep Selling Directive (85/577/EEC), the Unfair Terms Directive (93/13/EEC), the Distance Dealing Directive (97/7/EC), and the Consumer Sales Directive (99/44/EC). The purpose of the Directive is to remove inconsistencies in the existing legislation, such as the cooling-off period, which is to be 14 days in all member states (Steennot, 2012). Steennot argues that the Directive strives for full harmonization, and while it has been heavily criticized even before its implementation, it seems to have learned the lessons of a long history of directives (Loos, 2010). However, although the Directive has great advantages in regulating issues not covered before by any EU regulations, such as rules regarding the use of default boxes and regarding fees for using payment cards, (Howells and Watson, 2012) there are some issues not covered. For example, under Article 5(4), the Directive does not cover pre-contractual information between the consumer and trader. By leaving such rules to be regulated by national laws, the aim of full harmonization is therefore not achieved (Loos, 2010).

1. Alternative Disputes Mechanism

Access to justice is an important right for consumers (Benöhr, 2012) regardless of whether they buy from online shops or offline shops. The United Nations Guidelines for Consumers states that governments should promote a clear provision that allows consumers to obtain cheap, accessible, and fair regress. However, Benöhr argues, in practice, there are major barriers facing e-consumers in enforcing their rights, such as the possible financial costs of litigating, the conflicts of laws, and the length of court cases.

Resolving cross-border online disputes can be considered one of the greatest challenges facing the expansion of e-commerce (Alboukrek, 2003). These challenges affect confidence in purchasing online since cross-border, online dispute resolution lacks legal certainty (Petrauskas and Kybartiene, 2011). This legal uncertainty may occur due to

differences between the legal systems of the consumer's country and the traders. These differences may hamper cross-border transactions as both parties may lack knowledge of other laws, which mainly affects the confidence of consumers (Twigg-Flesner, 2010). According to a survey conducted by the European Commission, 57% of the respondents expressed their concern regarding the possible difficulties with resolving disputes when engaging in online cross-border transactions (EC Press Release, 2007). These potential difficulties can become more challenging when the claim has a small value, as there is a high probability that the expenses of the resolution, either by the court or alternative dispute resolution mechanisms, exceed the recovery amount (Cortes, 2010) Hence, although, some countries, such as France, that have low court costs, it is still insufficient to attract consumer claims (Hodges et.al, 2010).

The nature of cross-border, online transaction disputes having two different jurisdictions might make them hard to resolve by courts. In comparing the two approaches to resolving online disputes, the traditional court is often not appropriate, as it lacks fast procedure and experience of the technical issues of online transactions (Crawford,2001) whereas Alternative Dispute Resolution (ADR) can be considered a more sufficient mechanism in solving online cross-border transaction disputes since it eliminates delays and the high cost of traditional courts (Hang, 2000). In addition, ADR can help avoid conflicts of laws, as it allows parties to choose the applicable law and to set jurisdiction (Santos, 2013).

However, despite these advantages of ADR, no reliable or skillful research has been conducted to prove that ADR overrides traditional courts in terms of B2C online transactions (Betancourt and Zlatanska, 2013). It has been argued that traditional methods of ADR such as arbitration have been proven as non-helpful methods for dealing with complications inherent in court judgments of online transaction disputes (Dell et al, 2012). The shortcomings of ADR can be seen in dealing with cross-border online transaction disputes; according to a consultation paper published by the European Commission, only 62% of the current ADR schemes accept claims from consumers living in other EU Member States (Benöhr, 2012). Thus, it can be seen that national online disputes are often less complicated than cross-border disputes. As a result of the limitations of ADR in dealing with cross-border disputes, there is a need for a new mechanism to contribute to overcoming this problem by relying more on online platforms. Thus, ADR has been

significantly improved since it is supported by 'information and communications technology' (ICT) because it is faster, cheaper, and most importantly does not require traveling (Cortes, 2011). ODR is a form of combination between ADR and ICT as it means a 'form of alternative dispute resolution (ADR) that incorporates the use of the Internet' (Mission et al, 2002).

ODR can provide benefits to disputants regarding the flexibility to communicate their claims by sending an email any time they wish 24 hours and 7 days a week without the need to travel a long distance (Hang, 2000). However, unfortunately, these advantages of ODR are not available for all ADR schemes in the EU, as among about 750 ADR schemes (Knudsen, 2013) only 50% of them are using ICT to allow consumers to submit their complaints online and fewer than this percentage can deal with all dispute processes online (EC, 2010). As a result of this report, the draft Regulation on Consumer ODR has been proposed (Benöhr, 2012). In 2013, the European Council adopted the Regulation on Online Dispute Resolution (ODR) for consumer disputes (EU Regulation No 524/2013). In the same year, a directive on Alternative Dispute Resolution (ADR) was adopted by the European Council (EC, 2011). This combination of ODR Regulation and ADR Directive seems to be a comprehensive resolution for B2C cross-border transactions since it makes it easier to achieve out-of-court settlements (Benöhr, 2012).

ADR aims to enhance the quality and availability of ADR schemes in the EU; for example, the dispute should be resolved within 90 days and the procedures are free or with moderate costs (Benöhr, 2012), which should overcome the previous problems with ADR in dealing with disputes with small value as indicated above. In addition, ADR aims to increase consumer awareness of ADR schemes by requiring businesses to inform consumers about the competent type of ADR processes regarding their complaints (Cortes, 2013). Furthermore, besides this task of enabling access to justice, ADR raises market standards and promotes enforcement by identifying illegal and emerging activities using aggregated data (Hodges and Creutzfeldt, 2013).

However, according to Cortes, although online businesses are required by ADR to offer clear information about ADR schemes on their websites, not all of them participate in ADR schemes, in particular, those that are not required by national laws, which leaves consumers with two options: either sue the trader in court or give up the complaint. In addition, he argues that, those who participate in ADR schemes may refuse to accept

consumer complaints; in such situations, the consequences would differ depending on the type of ADR scheme. For instance, in arbitration, contractual agreements give the power to the consumer to pursue a case, while in mediation, the contractual agreement can only be enforced by a court, which may be difficult for a claim with a low value (Cortes, 2013).

On the other hand, the main purpose of ODR is to enhance consumer trust in e-commerce by overcoming legal uncertainty regarding resolving potential disputes. An ODR platform helps to achieve this purpose by providing an online platform where consumers can easily submit their complaints in their language, and they can get help in choosing the adequate ADR entity (Cortes, 2013).

Nevertheless, although it has been argued that ODR is the best instrument for enhancing consumers redress (OECD, 2009), the European Commission indicated that ODR's 'full potential has not yet been realised as their growth lags behind e-commerce' (EC Staff Working Paper, 2011, p.1408). ODR has some flexibility to improve to ensure that it plays an adequate role in enhancing e-consumer trust and establishing a single internal market. These main criticisms are that it should play a role in the prevention of disputes, not only after a dispute arises. In addition, the requirement for all commerce websites to provide a link to an ODR platform might mislead consumers. Finally, online communication is insufficient, as real interaction is needed.

According to Cortes, the ODR platform should not only be a 'referral website' when disputes arise. The role of ODR should not be limited to resolving disputes; trying to prevent such disputes can be an important feature to enhance consumer protection. These roles include online conflict prevention and negotiation (Corets, 2013). Online conflict prevention should play a sufficient role in ODR schemes by preventing potential disputes (Smith and Martinez, 2009). This prevention can occur when complaint information is used by regulators and businesses to address market problems (Corets, 2013). In fact, this approach has been used by eBay, resulting in more than 80% of disputes having been automatically handled and new rules being created to resolve possible new disputes (Rule, 2008). Furthermore, online negotiation through electronic means allows the buyer and trader to exchange proposals, and information and to negotiate a binding settlement (Rogers and Duca, 2010). Online negotiation can help in the early settlement of disputes arising from online transactions and in dealing directly with businesses without the need for a third party (Corets, 2013).

In addition, ODR requires all online businesses, even those that are not required to do so by national law, to provide a link to an ODR platform on their website, even if businesses are not participating in any ADR process. This information may mislead consumers, as it might give reliability to such websites (Corets, 2013). Providing such a link can be an indication to some consumers that this website has approved ADR schemes, while it does not.

Although using an online platform to communicate instead of doing so face-to-face is one of the important features of ODR (Schmitz, 2010) this approach has been criticized. Such criticism has mainly emphasized the importance of negotiation being face-to-face and not by other means, such as email. It also argued that there is a need for face-to-face interaction, which can happen rapidly and spontaneously, often on a non-verbal level (Betancourt and Zlatanska, 2013). In addition, It is widely agreed that mediation is most effective when the parties involved in the dispute are physically present with the mediator (D'Zurilla 1997). However, providing video communication can overcome this problem.

2. Enforcement Cooperation

Cross-border recognition and enforcement is a major problem facing e-consumers. Although e-consumers can sue a trader in their home forum, the need to seek enforcement in the trader's country is required (Alboukrek, 2003).

Nevertheless, although ODR provides an easy process to raise a claim, enforcement dispute resolution downplays the advantages of ODR. This is because e-consumers still have to attend a court physically to obtain a judgment (Schultz, 2003). As is widely known, mediation and negotiation agreements need to be enforced by a court. Schultz states that to overcome these issues, two solutions have been suggested: The first solution is providing an online court that easily produces a required judgment. He further argues that such a solution can maintain the purpose of ODR by providing both complaint procedures and enforcement through online means. Secondly, establish a court-based mediation process that produces judicial settlement agreements. With this, e-consumers will be provided with an easy approach to enforcement. This is because judicial settlement agreements are easier than extra-judicial agreements as it is an enforcement instrument by themselves (Schultz, 2003). In addition, it has been suggested that to help national courts and ADR

mechanisms, a chamber of the European Court should be established which specializes in cross-border consumer disputes (Twigg-Flesner, 2012).

Therefore, enforcement cooperation is an important factor in enhancing consumer protection. Cortes argues that the need for cooperation between ODR and regulators should be taken into consideration. He says that such cooperation can help to identify market failure when traders do not respond to consumers' complaints and help to ensure a quick response (Cortes, 2013). More importantly, enforcement of foreign judgments may face difficulty due to language differences (Osuji, 2011). These differences may lead to inappropriate translation of foreign judgments.

Conclusion

The EU aims to establish a single market for e-commerce by enhancing consumer trust in cross-border online transactions. Therefore, an increased number of directives has been enacted to regulate B2C online transactions. However, the debate over whether full or minimum harmonization is needed continues. The current approach of the EU in adopting directives with minimum harmonization has been criticized as lacking legal certainty and failing to unify protection for European consumers. This is because directives need to be transposed into national laws. This transposition may vary between member states due to language and culture barriers. In addition, directives could not cover all issues of B2C online transactions, leaving that to national laws. Such an approach creates variation and inconsistency in e-consumer rules, which results in a decrease in consumer trust and an increase in the concern over losing their home country's protection. Therefore, the aim of a directive may not be achieved unless a higher standard of consumer protection is adopted than national laws offer, and there is a shift to full harmonization to create a single, well-defined framework.

On the other hand, although adopting full harmonization by regulation may overcome the problem of uncovered issues and differences in translating directives into national laws, it might prevent member states from adopting a higher level of consumer protection. In addition, choosing standards that comply with all the differences of member states, either in language or culture, might be hard. However, adopting full harmonization may create strict rules for issues that justify minimum harmonization, not full. Therefore, it has been

argued that distinguishing these should take into consideration differences between those issues justifying full harmonization and those justifying minimum.

Harmonization should expand to dispute resolutions, especially in cross-border transactions, as consumers might be subject to foreign jurisdiction. Such an obstacle may hamper consumers from engaging in cross-border transactions. Overcoming this problem using ADR mechanisms might be easier and more appropriate for resolving such disputes than traditional courts, as the latter lacks fast procedures and experiences technical issues. Therefore, to enhance e-consumer confidence in buying from cross-border online shops. The EU has adopted ODR and ADR. ODR contributes to improving ADR by using ICT. All e-shops in member states are obligated to provide a link to an ODR platform, where e-consumers can process their complaints online. However, although such an approach represents a significant improvement for e-consumer protection rules, some issues may limit its effectiveness. First, providing a link to an ODR platform can give the wrong impression to some consumers that the website has approved ADR schemes while it does not. Second, using online means in mediation, for example, instead of face-to-face can affect the results. Finally, ADR has been criticized as being inadequate due to insufficient enforcement mechanisms. Therefore, although e-consumers can easily make complaints online, they still need to seek enforcement, especially in mediation and negotiation agreements. This weakness should be resolved to achieve the aim of the EU by providing a single, secure market. For example, an online court can be established to provide required judgments or to create court-based mediation that produces judicial settlement agreements that are enforcement instruments by themselves.

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Conflicto de interés

La autora de este manuscrito declara no tener ningún conflicto de interés.

Declaración ética

La autora declara que el proceso de investigación que dio lugar al presente manuscrito se desarrolló siguiendo criterios éticos, por lo que fueron empleadas en forma racional y profesional las herramientas tecnológicas asociadas a la generación del conocimiento.

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