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An Analysis of the revised United Nations guidelines for consumer protection and the **OECD** Recommendation of the Council on Consumer Protection in E-Commerce

تحليل للمبادئ التوجيهية المنقحة للأمم المتحدة لحماية المستهلك وتوصية منظمة التعاون والتنمية في الميدان الاقتصادي الصادرة عن مجلس حماية المستهلك في التجارة الإلكترونية.

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## **Abstract :**

The general principles of the United Nations related to consumer protection and the recommendations of the Organization for Economic Cooperation and Development issued by the Consumer Council are the international reference for protection for all matters relating to electronic commerce.

It is impossible to study every aspect of the UN Guidelines and the OECD Recommendation in an article, but it is fair to say that this said legislation will provide better protection for consumers using e-commerce. However, there is still a long way to go to reach agreed comprehensive legislation. I believe that effective cooperation across e-commerce across borders, encouraging strict law on e-commerce transactions, and encouraging online consumer education campaigns would increase consumer protection with e-commerce.

## **Key words :**

consumer- protection- electronic- commerce- e-commerce- online consumer education.

## **الملخص:**

تعتبر المبادئ العامة للأمم المتحدة المتعلقة بحماية المستهلك وتوصيات منظمة التعاون والتنمية في الميدان الاقتصادي الصادرة عن مجلس المستهلك المرجع الدولي للحماية لكل ما يتعلق بالتجارة الإلكترونية. من المستحيل دراسة كل جانب من جوانب المبادئ التوجيهية للأمم المتحدة وتوصية منظمة التعاون والتنمية في مقال لكنه من الإنصاف القول إن هذه التشريعات المذكورة ستوفر حماية أفضل للمستهلكين الذين يستخدمون التجارة الإلكترونية. ومع ذلك ، لا يزال هناك طريق طويل للوصول إلى تشريع شامل متفق عليه. أعتقد أن التعاون الفعال عبر التجارة الإلكترونية عبر الحدود وتشجيع القانون الصارم بشأن معاملات التجارة الإلكترونية وتشجيع حملات تثقيف المستهلكين عبر الإنترنت من شأنه أن يزيد من حماية المستهلكين باستخدام التجارة الإلكترونية.

## **الكلمات المفتاحية:**

حماية المستهلك - التجارة الإلكترونية - التجارة الإلكترونية - تعليم المستهلك عبر الإنترنت.

## **Introduction :**

Consumers are globally at the centre of the commercial world. The behaviour of consumers has been rapidly changing. Internet users and online trading has increased in the last decade. As marketplaces become increasingly digital and globalised, there are new ways for consumers to shop, communicate, conduct banking transactions, socialise. Digitalisation provides consumers with choice, opportunities, convenience and lower prices. The emergence of smart-phones and other related technologies further accelerated the pace of digitalisation. These developments from mobile payments in Turkey to smart TVs in Germany have transformed consumers' lives. While digitisation has clear advantages for consumers, it poses significant challenges in terms of the consumer protection.

Despite developments in the online products and services, the legal protection of consumers globally falls short. If digital consumers cannot trust the digital economy, the use of digital economy would be threatened decrease sharply. Therefore, there is a need to adapt legal and regulatory frameworks to particular requirements of e-commerce.

Digitalisation of the business environment was the driving force behind the revision of the UN guidelines for consumer protection, which was adopted by the UN General Assembly in its resolution 70/186. Another international attempt to protect consumers in e-commerce is the OECD Recommendation of the Council on Consumer Protection in E-Commerce.

The UN defines e-commerce as follows "...electronic commerce, which should be understood to include mobile commerce, has become increasingly relevant to consumers worldwide and that the opportunities it offers should be harnessed to help facilitate economic development and growth based on emerging network technologies, with computers, mobile phones and connected devices that promote consumer welfare". OECD defines an e-commerce transaction as "the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders" (see <http://stats.oecd.org/glossary/detail.asp?ID=4721>).

It is reasonable to assume the consumer protection terms in relation to business to consumer transactions. However, it is not restricted to such transactions. The OECD Recommendation applies to business to consumer e-commerce, but contains business practices which enable and facilitate consumer-to-consumer transactions. In the case of the business to consumer transaction, a trader sells online accepts online orders; a consumer reviews products and acquire them online. Also, a payment method has to be specified, which could be a credit card, electronic money, bank transfer or cash on delivery. Finally, the product or service must be delivered.

E-commerce is one of the new areas in the revised UN guidelines for consumer protection. According to Article 5 of the Guideline, one of the core aims of the UN in the revision of the guidelines for consumer protection is to reach a level of protection for e-consumers that is provided in other forms of commerce. Article 11 of the Guideline is included e-commerce to good business practices applicable to all forms of commerce. This guideline also encourages Governments to develop consumer protection policies which is



also applicable to e-commerce. These policies includes information disclosure, contract terms, secure payment mechanisms, consumer privacy and data security and dispute resolution. Guideline 44 also highlights the important aspects of consumer protection, including e-commerce which should be added education programmes.

*63. Member States should work towards enhancing consumer confidence in electronic commerce by the continued development of transparent and effective consumer protection policies, ensuring a level of protection that is not less than that afforded in other forms of commerce.*

*64. Member States should, where appropriate, review existing consumer protection policies to accommodate the special features of electronic commerce and ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace.*

*65. Member States may wish to consider the relevant international guidelines and standards on electronic commerce and the revisions thereof, and, where appropriate, adapt those guidelines and standards to their economic, social and environmental circumstances so that they can adhere to them, as well as collaborate with other Member States in their implementation across borders. In so doing, Member States may wish to study the Guidelines for Consumer Protection in the Context of Electronic Commerce of the Organization for Economic Cooperation and Development.*

The OECD recommendation also deals with the core characteristics of effective consumer protection online. However, it also focusses on innovation and competition in the market. The revised OECD Recommendation places a particular focus on non-monetary transaction, digital content products, active consumer, mobile devices, privacy and security risks payment protection and product safety. The OECD Recommendation includes a new provision, privacy and security risks.

According to the OECD, “consumer data is at the core of many e-commerce services and elevates privacy and security risks. The Recommendation recalls the need to address these risks consistent with other OECD instruments and includes two new provisions highlighting specific protections of particular importance for B2C e-commerce”. Therefore, in relation to privacy and security risks Article 49 of the Recommendation states that “Businesses should manage digital security risk and implement security measures for reducing or mitigating adverse effects relating to consumer participation in e-commerce”.

Information asymmetry is one of the core problems of e-commerce due to the nature of the Internet and complexity of the e-commerce contracts which are rarely read by consumers. Hence, consumers could be misled and are vulnerable to deceptive conduct or fraud. In order to have them made informed decisions in the context of e-commerce transaction they must have relevant and accurate all information regarding goods or services that they intend to purchase.

In the context of information asymmetry, The UN Guideline 5(e) states that consumers have the legitimate need “Access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs”. Guideline 14(b) encourages national states to promote clear and timely information – including identity of the business, legal name, principal geographic address, website, e-mail address and telephone number – to enable consumers to contact businesses easily and to enable regulatory and law enforcement authorities to identify and locate them.

Similarly the OECD recommendation imposes responsibility on businesses to provide consumers with sufficient information. According to Article 28 of the OECD Recommendation, the information includes i) identification of the business; ii) prompt, easy and effective consumer communication with the business; iii) appropriate and effective resolution of any disputes that may arise; iv) service of legal process in domestic and crossborder disputes; and v) location of the business. Article 31 and 32 of the OECD Recommendation requires businesses to provide sufficient information describing the goods or services offered to enable consumers to make informed decisions regarding a transaction.

**These articles are as follows:**

*31. Businesses engaged in e-commerce with consumers should provide information describing the goods or services offered that is sufficient to enable consumers to make informed decisions regarding a transaction.*

*32. Depending on relevant factors, including the type of good or service, this should include information such as: i) Key functionality and interoperability features; ii) Key technical or contractual requirements, limitations or conditions that might affect a consumer’s ability to acquire, access or use the good or service; iii) Safety and health care information; and iv) Any age restrictions.*

Consumers also experience difficulties during the purchase phase after they have decided to buy a good or service online. The most experienced challenge is the unfair contract terms, online payment security, data protection and privacy, including non-monetary transactions.

The UN Guideline 14(d) requires a contract term to be clear, concise and easy to understand that is not unfair. Guideline 11(c) requires businesses to provide “complete, accurate and not misleading information regarding the goods and services, terms, conditions, applicable fees and final costs to enable consumers to take informed decisions”. The OECD Recommendation also requires business not to misrepresent or hide terms and conditions that may possible affect the decisions of consumers regarding a transaction and not to use unfair contract terms.

## **Conclusion:**

It is impossible to examine every aspect of the UN Guideline and the OECD Recommendation in a very short presentation. It is fair to say that these developments will possibly provide better protections for consumers using e-commerce. However, there is still a long way to go. I believe that effective cooperation cross-border e-commerce and promoting hard law on e-commerce transactions and encouraging online consumer education campaigns would further protect consumers using e-commerce.

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