



# The United Nations Guidelines for Consumer Protection: Legal Implications and New Frontiers

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## Abstract

The United Nations set a milestone in the development of consumer law when it adopted the United Nations Guidelines for Consumer Protection in 1985 (UNGCP), establishing for the first time a set of international consumer law principles. Since then, with the emergence of the digital era, the landscape has experienced dramatic changes, and consumers have been facing an expanding range of global challenges, especially in the financial services sector. To reflect this changing landscape, new provisions were added by revised Guidelines in 1999 and again in 2015, which included recommendations on good business practices, financial protection and e-commerce. However, the Guidelines are only soft law provisions, as they are not legally binding on Member States. The question therefore arises of how effective they can be in promoting consumer law at the national and global levels. This article will argue that a comprehensive international consumer law framework is essential in the current context, and that there has been some advancement towards this since the adoption of the Guidelines. However, while the United Nations is playing a unique role in promoting an inclusive and broad consumer protection approach, it sometimes lacks the legal powers and resources to ensure the full effectiveness of its Guidelines. The article thus examines the evolution of consumer protection at the international level, assessing the legal landscape and key players in the field. It outlines the increasing involvement of the United Nations in the area of consumer protection, analysing the core features of the revised Guidelines and their implications, and concludes by suggesting avenues for future development.

**Keywords** International consumer protection · United Nations Guidelines · Soft law

A new consumer law framework is emerging at the international level, promoted by international and regional organizations (Durovic and Micklitz 2017). The United Nations set a milestone in the development of consumer law in 1985, when the General Assembly adopted

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the UN Guidelines for Consumer Protection (UNGCP) and thus established for the first time a set of international consumer law principles ([Resolution 39/248](#)). Since then, with the emergence of the digital era, the landscape has experienced dramatic transformation, and consumers have been facing an expanding range of challenges. Therefore, new provisions were introduced by the revised Guidelines in 1999 and then 2015 covering, among other policies, sustainable consumption, good business practices, financial protection, and e-commerce (United Nations 2016). Furthermore, other international organizations have increasingly become involved in the development of consumer protection, including the Organisation for Economic Co-operation and Development (OECD) and the World Bank. They have established good practices in specific areas of consumer protection, particularly with regard to financial services and education. As a result, consumer protection has gradually transformed from being a mainly national topic to being a core supranational law subject (Howells, Ramsay, and Wilhelmsson 2018, pp. 1–15).

In light of this evolving landscape, fundamental questions arise as to how the UN Guidelines differ from other consumer protection measures, and what their role has been in the said transformation of consumer protection. Opinions on the creation of international consumer standards have varied over time, sparking controversial debates. While initially some experts regarded the UN Guidelines as an unnecessary market intervention tool (Wiedemann 1983), they are now considered to be an essential step in protecting consumers (Harland 1997, pp. 1–12). However, international consumer protection instruments often have a solely soft law status as they are not binding on Member States, raising doubts as to their effectiveness.

This article will add to the existing debate, analysing the contribution of the United Nations in promoting international consumer protection, and assessing how the UN's role has changed over the years, in particular with the 2015 revised Guidelines. It argues that a comprehensive international consumer law framework is essential in the current context, and that there has been some advancement since the adoption of the Guidelines. However, while playing a unique role in promoting an inclusive model of consumer protection, the UN lacks the legal powers and resources to ensure full effectiveness of the Guidelines.

This article first analyses the emerging international framework in the area of consumer law, exploring the drivers of its development and the contribution of key players in establishing minimal protective standards. It then examines the leading role of the United Nations in promoting consumer protection, focusing on novel aspects of its Guidelines: good business practices, e-commerce, financial protection, dispute resolution and redress, cooperation, and institutional machinery. Finally, the article assesses the influence that the existing international measures may exert on national consumer law, and proposes avenues to strengthen international consumer protection.

## Development of International Consumer Law

Over the past decades, a growing number of international actors have become involved in the development of consumer protection, driven by changes in the economy and by consumer movements. Applying often a soft law approach, these organizations have adopted recommendations, high-level principles, and best practices, which have gradually influenced national and regional systems (Howells et al. 2018, pp. 1–15).

Several factors have contributed to this development: First, the reduction of trade barriers and new technologies have facilitated the purchase of goods abroad allowing consumers in the

globalized economy to increase their engagement in cross-border transactions (Wei 2017, pp. 3–22). On the one hand, this has benefited consumers, who now have more choice between products and services that they can easily compare online. On the other hand, because of different selling practices and legal barriers across countries, this has created challenges in enforcing cross-border consumer rights, apart from the inevitable information limitations when buying goods or services from distant sellers (Wei 2017, pp. 3–22). In such a context, national law can only provide a limited solution, requiring the development of international consumer protection provisions (Twiggs-Flesner and Micklitz 2010, pp. 201–207).

Second, international organizations have become more active in the development of standards, attempting to address existing gaps and inefficiencies in national consumer protection regimes (Durovic and Micklitz 2017, p. 2). The United Nations has played a leading role in this regard by adopting the Guidelines for consumer protection and by promoting consumer protection activities at the national and regional level. In so doing, the UN has become the main promoter of consumer protection in developing countries, which were often lacking a protective framework.<sup>1</sup> For its part, the OECD has actively contributed to the debate on the revised UN Guidelines and has issued a large number of its own Guidelines on different consumer protection areas, including electronic commerce, sustainable consumption, and dispute resolution. Furthermore, in the wake of the 2008 financial crisis the OECD and the World Bank developed high-level principles and best practices to promote financial consumer protection (Ramsay 2018).<sup>2</sup>

Several UN agencies have also contributed to the development of international consumer protection standards. For example, the Food and Agriculture Organization (FAO) has created the Emergency Prevention System (EMPRES) for food safety and,<sup>3</sup> jointly with the World Health Organization (WHO), has established the Codex Alimentarius Commission.<sup>4</sup> This body is in charge of establishing global standards for the production of food, which have inspired several national food legislations and played an important role in WTO-related trade disputes (Wei 2017, pp. 11).

Although not part of the UN, the International Organization for Standardization (ISO) has actively participated in the UN debates on consumer protection and has established its own international standards covering, for example, product safety, customer satisfaction, and the rights to redress and information.<sup>5</sup> Finally, the International Financial Consumer Protection Organisation (FinCoNet) was established in 2013 as a voluntary association of supervisory authorities responsible for financial consumer protection across Europe, Africa, Asia, and South America.<sup>6</sup>

The above demonstrates the increasingly international dimension of consumer law. It is developing in a pluralistic and diverse landscape where, however, there are strong tendencies towards co-ordination and harmonization, expressed by the establishment of guidelines, best practices, and common consumer protection standards (Wei 2017, pp. 3–22). An increasing number of agencies and organizations have become involved in this global process, but most

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<sup>1</sup> UNCTAD in particular has managed a wide range of capacity building programmes to help governments develop consumer protection systems.

<sup>2</sup> These developments reflect an emerging global consensus that there is a need for stronger financial consumer protection, particularly in the credit market.

<sup>3</sup> <http://www.fao.org/food/food-safety-quality/empres-food-safety/en/> (accessed in 2019).

<sup>4</sup> <http://www.fao.org/fao-who-codexalimentarius/en/> (accessed in 2019).

<sup>5</sup> <https://www.iso.org/iso-and-consumers.html> (accessed in 2019).

<sup>6</sup> <http://www.finconet.org/> (accessed in 2019).

of them deal solely with specific aspects of consumer protection, such as health protection or financial services. However, the UN, with its Guidelines for Consumer Protection, stands out by providing a more comprehensive approach covering the key consumer protection areas. The next section will therefore focus on the development of the said UN Guidelines, exploring their content and implication.

## The UN Guidelines for Consumer Protection

In 1985, the United Nations made a significant contribution to international consumer law by adopting the UN Guidelines for Consumer Protection. Prior to this, many consumer groups had argued in favour of the introduction of such an international instrument, with Consumer International in particular taking a leading role, suggesting a consumer protection code (Consumer International 1975).<sup>7</sup> In response to these initiatives that had taken the shape of a global movement, the UN Economic and Social Council (ECOSOC) entrusted its Secretary General with the task of developing a set of guidelines which would also be mindful of the specific requirements of developing countries (Harland 1987). The Secretary General took account of multiple sources when it drafted the Guidelines, including the OECD, national consumer agencies, consumer groups, and relevant national legislation.<sup>8</sup> After intense debate, the Guidelines were eventually adopted, providing for the first time an international and broad consumer protection framework. They recognize that “consumers often face imbalances in economic terms, education levels, and bargaining power” and highlight in particular the “importance of promoting just, equitable, and sustainable economic and social development.” Covering a large range of consumer protection areas, including health and safety, consumer education and information, promotion of economic interest, and effective redress the Guidelines have gradually become a core reference point for Member States (e.g., Muniz Cipriano and Santana 2017, pp. 25–37). For example, Brazil and Australia were inspired by the provision of the Guidelines to develop or update their consumer protection regimes (Harland 1997, pp. 7–10).<sup>9</sup>

In 1999, after the successful advocacy by several civil society groups motivated partly by the 1992 Earth Summit in Brazil, the Guidelines were expanded, introducing a set of new provisions on sustainable consumption (UNCTAD Manual 2004). The revised version includes a basic framework for sustainable consumption that government agencies could apply to integrate existing provisions on this matter at the national level (Guideline H).

The Guidelines were revised again in 2015 to reflect major changes in the global economy and the digital era. In particular, new sections were included on good business practices, national consumer protection policies, electronic commerce, and financial services. In addition, the sections on consumer redress and international cooperation were expanded to deal with recent enforcement and dispute resolution challenges, while the section on specific areas newly included energy, public utilities, and tourism. Finally, the Guidelines introduced an innovative institutional mechanism to periodically monitor their implementation; the implications of which will be explored later on.

<sup>7</sup> See the historic overview by UNCTAD: <https://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx> (accessed in 2019).

<sup>8</sup> For more information see: <https://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx> (accessed in 2019).

<sup>9</sup> Brazil was inspired by the Guidelines when developing its consumer protection code of 1990.

Over time, the scope of the Guidelines has thus been broadened. Moreover, their focus has also shifted towards a more inclusive and diverse consumer protection approach. Whereas the initial Guidelines were concerned with a “general” consumer, without differentiating between distinct groups of individuals, the newly revised version identifies and pays special attention to the vulnerable and disadvantaged consumers (in their “legitimate needs” section) (Pearson 2017, pp. 39–50). Moreover, it places a new emphasis on consumers’ access to essential goods and services, as reflected in its new section on General Principles.

The following sections will examine in detail the most significant innovations brought about by the new Guidelines in different dimensions: the inclusion of good business practices and e-commerce, the expansion of financial consumer protection and dispute resolution, an effort to promote international cooperation, and the establishment of a new institutional machinery.

## Good Business Practices

An important novelty of the 2015 Guidelines is that they include a section on good business practices, requiring that companies take direct responsibility for consumer protection. This represents a general shift from previous versions, which focused on national governments as promoters for consumer protection. Under the new framework the UNGCP aim to establish “benchmarks for good practices” to encourage “high levels of ethical conduct” in companies that produce or distribute consumer goods or services (Section IV, Guideline 1c).

This approach follows a broader trend that became evident during the last decade, and which inclined towards co-regulation and self-regulation methods for businesses (UNCTAD Manual 2017). Several international organizations have become particularly active in this regard, such as the ISO with the development of the Guidance on Social Responsibility (ISO 26000 2010) and the OECD, which issued the Guidelines for Multinational Enterprises Recommendations for Responsible Business Conduct (OECD 2011).

In line with these recommendations, the UN Guidelines cover a large number of business practices, ranging from the fair and equitable treatment of consumers to disclosure and transparency; from education and raising awareness to protection of privacy and dispute resolution. Companies are expected to “deal fairly and honestly with consumers at all stages of their relationship,” and “should avoid practices that harm consumers” (Section IV a). In particular, they should abstain from “illegal, unethical, discriminatory or deceptive practices, such as abusive marketing tactics,” which may deceive or expose consumers to unnecessary risks (Section IV b). In addition, the Guidelines require firms to comply with strict standards of disclosure and transparency as they should “provide complete, accurate and not misleading information regarding the goods and services, terms, conditions, applicable fees and final costs to enable consumers to make informed decisions” (Section IV c). Companies are expected to go even further by helping consumers acquire sufficient skills and knowledge to understand risks and make decisions informed by competent advice and support (Section IV d). They should also protect the privacy of consumers and offer complaints handling mechanisms to resolve disputes expediently (Section IV e and f). At the same time, Member States are expected to actively promote these practices at the national level by adopting consumer policies that encourage responsible corporate behaviour while promoting the relevant education of both business and consumers (Guidelines A (a) and (i)).

The new focus on good business practices is a welcome addition to the previous UN Guidelines and a significant step towards self-regulation as a means to improve consumer protection (Pearson 2017, pp. 39–50). Self-regulation can play an essential role in consumer law as an instrument to support existing legislation and as a mechanism to set standards for contracts (Cafaggi 2007). While this approach can be more flexible than regulatory solutions, and thus capable of filling gaps in the existing legal framework, questions have been raised about the effectiveness of corporate social responsibility (CSR) and self-regulatory systems, especially due to insufficient monitoring and the absence of stringent sanctions in case of non-compliance (UNCTAD Manual 2017). For example, De Schutter (2008) questions whether market mechanisms alone can sufficiently ensure that companies will comply with CSR obligations, arguing in favour of an appropriate regulatory framework, which actively promotes responsible corporate behaviour. This might be necessary as business codes of conduct, and in particular, voluntary CSR frameworks, are at risk of being used merely as promotional tools by some companies without sufficiently complying with the principles in practice (Rühmkorf 2015).

The OECD, for its part, highlighted both the advantages and weaknesses of such an approach for consumer protection. On the one hand, self-regulation may fill those regulatory gaps left by governments or it may provide consumers with more far-reaching protective standards (OECD 2015). Sometimes self-regulation may be preferable to state-imposed schemes, as it can offer less bureaucratic and cheaper dispute resolution options. This could benefit consumers as well as companies because self-imposed codes of conduct can improve consumer confidence while avoiding potential government intervention (OECD 2015). On the other hand, a self-regulatory approach faces important challenges. First, privately developed schemes might lack available oversight and enforcement mechanisms to ensure compliance. Second, self-regulated systems are not easy to design, as they have to provide the right incentives for participants to join and to comply with. For example, they have to prevent free-riding behaviour, whereby some businesses may formally join but in practice not comply, benefitting from the reputation brought about by the scheme, while skewing the playing field in its favour. Related to this is the issue of resources. Being a private endeavour, a self-regulated system has to source from within itself the means to monitor its members and enforce its rules. A priori, it may be difficult to understand which market participants ultimately bear the costs of self-regulation – the companies or the consumers themselves, as some businesses might pass on the costs to their consumers (OECD 2015).

While the success of self-regulation depends on multiple factors, including market circumstances, clarity, and public awareness of provisions, a number of elements seem to be particularly relevant for consumer protection (OECD 2015). First, when companies develop best practice codes, it is essential that appropriate mechanisms are in place to ensure implementation and enforcement of these provisions. Second, self-regulation is likely to be more effective if a large number of businesses participate in best practice schemes. Third, the establishment of independent dispute resolution mechanisms can both enhance trust and monitoring of the schemes. Fourth and last, the involvement of different stakeholders in the development of best practice codes including, in particular, consumer organizations and governments can improve the quality of the schemes, ensuring that diverse interests are taken into account (OECD 2015). Overall, there seems to be a growing consensus that both are needed: a robust set of standards established by law at the national level, and an accepted paradigm of good business conduct (Pearson 2017, pp. 39–50) developed collaboratively by

government officials and companies alike (Hodges 2016). Neither one can be a substitute for the other as each has important advantages and limitations.

## Electronic Commerce

E-commerce has grown significantly during the last decades bringing various benefits to consumers in terms of broader choice and convenience. At the same time, consumers are facing numerous challenges with regard to misleading advertising, online payment security, unfair terms, data protection, and dispute resolution (Riefa 2009; UNCTAD 2017a).<sup>10</sup> In order to deal with these recent developments, a new section devoted specifically to electronic commerce was integrated in the revised 2015 Guidelines. Directed towards Member States, and relatively short, this section is nevertheless innovative. According to Guideline 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.” Furthermore, Guideline 64 encourages Member States to ensure that businesses and consumers know about their rights and obligations in the digital marketplace. Section V A on national consumer policies also includes provisions on consumer privacy and data security. Finally, reference is made to other international standards on electronic commerce, in particular to the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, which should be implemented by each Member State in collaboration with all others, and also taking into account the specific national context.

The above OECD Guidelines, adopted in 1999 and updated in 2016, aim to ensure, as the UNGCP, that online consumers benefit from equal protection as those who buy from a local store. In addition, they cover a wide range of topics, including fair business advertising, clear information for consumers, transparent transactions confirmation, secure means of payment, education, privacy protection, dispute resolution, and redress mechanisms. Importantly, they established a set of new protective standards.

Despite this, the weak point in consumer protection still lies in the national systems whose role may become more limited with the expansion of cross-border transactions via the internet. In these cases, consumers are still exposed to important risks. First, they often face a lack of effective dispute resolution mechanisms (Pearson 2017, pp. 39–50). Second, they may have to navigate multiple applicable laws and identify the relevant enforcement method (UNCTAD Manual 2017). While the above guidelines encourage cooperation at the global level which can help tackle some of these barriers, take-up seems slow with authorities struggling to keep pace with fast developing innovations, and concerns seem to be mounting, especially in specific areas (Pearson 2017, pp. 39–50). For example, concerns about effective privacy protection and the liability of platform providers have been made more acute by recent events, such as the Facebook–Cambridge Analytica scandal in 2018. Cambridge Analytica had harvested personal data from Facebook without asking for the users’ consent. The company used this data to target individuals with advertisements of a political nature. While the main culprit was Cambridge Analytica, it emerged that Facebook had been at least complacent with the firm by not protecting the personal information of its own users. Consequently, Cambridge Analytica was closed down and Facebook faced fines in the United Kingdom (UK) and the

<sup>10</sup> <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1724> (accessed in 2019).

United States of America (USA), and an unprecedented backlash from clients and financial investors.

This scandal highlighted the risks that consumers can face with regard to their personal information, suggesting the need for more effective data protection measures. However, this episode also showed how easily legal challenges might emerge because of new technologies.

To the extent that such innovation may outpace traditional law-making processes, an important role exists for self-regulation schemes that can quickly adapt to these rapidly evolving areas (OECD 2015). In particular, the development of codes of conduct can help mitigate consumer protection challenges at the cross-border level (van Ooijen and Vrabec 2019). The Guidelines too are likely to require further revision in the future to adapt to this rapidly changing environment.

## Financial Services

Over the past decades, there has been a proliferation of financial services that has broadened the choice of consumers and made services more widely available. At the same time, financial products have become more complex, making it difficult for consumers to assess related risks such as over-indebtedness (Benöhr 2018; Ramsey 2015). This all became painfully clear with the recent financial crisis which, however, had the positive effect of focusing the attention of legislators across the globe on consumer protection. As a result, in 2011, the G20/OECD developed the High-Level Principles on Financial Consumer Protection<sup>11</sup> and in 2012, the World Bank established Good Practices to strengthen financial consumer protection.<sup>12</sup>

In a similar trend, the UNGCP added a new section on financial services to encourage legislative action and enforcement at the national level (Section V J). This covers many aspects of financial services, including oversight entities, education strategies, fair treatment, disclosure, responsible business conduct, and data protection. According to the Guidelines, Member States are encouraged to establish consumer protection policies and financial oversight bodies (Guideline 66 a and b). They should promote education to improve financial literacy and also encourage disclosure; in particular, there is a recommendation to expand the use of written policies to reveal and help identify any possible conflicts of interest with the service provider (Guideline 66 d and e). Another aspect of particular importance since the financial crisis is the focus on fair treatment of the consumer and on responsible business conduct. Together, these have become the centre of attention for new reforms at the regional level, supported by reference to a principle of financial inclusion. Accordingly, the UNGCP encourage financial service providers to apply responsible lending practices and ensure that sales are suited to the means and needs of consumers (Guideline 66 f). The Guidelines also suggest that Member State take action to integrate and strengthen consumer policies with regard to financial inclusion in order to avoid the exclusion of vulnerable individuals (Guideline 67). Finally, providers have to ensure adequate data protection for financial service users to avoid potential abuses and fraud, and enhance consumer trust in the digital economy (Guideline 66 g).

As mentioned, the UN Guidelines are one in a series of initiatives. The UN was aware of this, so the Guidelines suggested that national legislators should also take account of other international standards: the OECD and G20 High-level Principles on Financial Consumer

<sup>11</sup> <https://www.oecd.org/daf/fin/financial-markets/48892010.pdf> (accessed in 2019).

<sup>12</sup> <https://openknowledge.worldbank.org/handle/10986/28996> (accessed in 2019).



Protection, the G20 Principles for Innovative Financial Inclusion, and the World Bank's Good Practices for Financial Consumer Protection (Guideline 68).

The expansion of this new financial service section can be regarded as a positive development, providing a useful framework for countries that wish to reform their consumer protection system. In particular, the new provisions regarding responsible lending, inclusion, and sale of suitable products are essential innovative trends since the crisis. However, the UNGCP fail to mention some important elements of consumer protection in the financial service sector. In particular, they contain no provisions in the specific section regarding creditworthiness tests, debt management, and insurance products (UNCTAD Manual 2017). These aspects have become increasingly relevant in a landscape of rising household over-indebtedness and mis-selling practices (Benöhr 2018; Cherednychenko and Meinderstma 2018). It seems desirable that future revisions of the Guidelines will address these points.

## Dispute Resolution and Redress

The 2015 UNGCP expanded the section on consumer redress to follow recent innovations in dispute resolution systems and inspired by a general increase in mass actions and cross-border cases (Section V F). The current version is more detailed than the previous one, and now mentions alternative, cross-border, and collective dispute resolution mechanisms. According to the Guidelines "Member States should encourage the development of fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases" (Guideline 37). In addition, these mechanisms have to be expeditious, cheap and accessible, and should be available for disadvantaged and vulnerable consumers. Furthermore, companies should play a major role in resolving consumer disputes by offering voluntary advisory services and complaint procedures that should be cheap, transparent, and fair. These can be measures to encourage in-house dispute resolution, avoiding escalation to an external mediator or, even more expensive, the court process (Guideline 38).

Another significant novelty of the revised Guidelines is that Member States should provide for collective redress procedures that have to comply with certain standards. They have to be "expeditious, transparent, fair, inexpensive and accessible to both consumers and businesses, including those pertaining to over-indebtedness and bankruptcy cases" (Guideline 40). Finally, Guideline 41 recommends that consumers are made aware of the different options in terms of dispute resolution mechanisms and procedures if no amicable solution is found.

The revised UNGCP therefore reflect a general shift from a focus on "traditional" mechanisms of redress, towards a broader access to justice approach, which aims to provide consumers with a wider choice between different dispute resolutions and redress options (Benöhr 2013; Cappelletti 1993; UNCTAD Manual 2017, 83–88). In particular, the quality requirements for collective redress and alternative dispute resolution mechanisms set by the new UNGCP constitute an important step in facilitating access to justice. This is a relevant development because, as recent studies have shown, consumers face numerous barriers to seeking redress, ranging from financial constraints and lack of adequate redress mechanisms, to complex formal requirements (Civic Consulting and Oxford Economics 2008; EU Report 2018). In Europe, the EU has adopted several measures to address some of these barriers, such as a Directive on Consumer ADR (2013), a Regulation on Online Dispute Resolution (2013) and a Commission Recommendation on common principles for injunctive and compensatory

collective redress (2013). As a result, an online dispute resolution platform was established and Member States were required or encouraged to adopt relevant provisions to facilitate consumer dispute resolution and redress in the European Union. More recently, the European Commission proposed a new Directive on representative actions (2018), which would enable qualified entities to bring actions for the protection of the collective interests of consumers (2018). If adopted, this Directive could stimulate an increase in collective redress claims for damages by consumer groups, while facilitating funding of these cases.

Despite the extended reach of the UNGCP, questions remain as to how effective dispute resolutions will be at the cross-border level without the formal cooperation and supervision by Member States. In this context, consumers still face multiple barriers in accessing justice due to differing languages, complex legal systems, and consistently high costs. A dispute resolution model that has been successful in facilitating access to justice for consumers is the ombudsman scheme at the national level, such as the Financial Ombudsman Services in the United Kingdom. Furthermore, in the EU, the European Consumer Centres Network (ECC-Net) has supported consumer dispute resolution at the cross-border level (Hodges et al. 2012), which is further explored in the next section. These specific options are not mentioned in the 2015 Guidelines but might be useful models to consider in the future.

## International Cooperation

The UNGCP Section VI on international cooperation was significantly revised in 2015 spawning a number of new Guidelines. The objective was to promote stronger cooperation between the different national agencies, which is essential because currently, no international court exists to deal with cross-border consumer disputes (Pearson 2017, pp. 39–50).

According to Guideline 79, Member States should develop mechanisms for the exchange of information on national consumer protection policies and promote cooperation in the implementation of relevant policies. They should also cooperate “to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and quality.” This could be achieved through the exchange of information on procurement options, or the joint procurement of essential goods. Although measures are not compulsory, Member States are encouraged to develop information links regarding banned or severely restricted products and should try to ensure homogeneity in product quality to protect consumers (Guideline 81).

A special area of cooperation is that of enforcement and suppression of illicit behaviour. First, according to Guideline 82, Member States should “cooperate in combating fraudulent and deceptive cross-border commercial practices” and their agencies should develop a framework for this purpose. Several Guidelines then cover the cooperation between enforcement agencies to deal with investigations and enforcement tasks, avoid interference with the work of other agencies, and resolve disagreements that may arise.

Furthermore, a network of enforcement agencies is envisaged, with each country being encouraged to designate a relevant enforcement agency to become a contact point and facilitate cooperation (Guidelines 83–85 and 87). To achieve this, Member States “should provide their consumer protection enforcement agencies with the authority to investigate, pursue, obtain and, where appropriate, share relevant information and evidence, particularly on matters relating to cross-border fraudulent and deceptive commercial practices affecting consumers” (Guideline 88). Finally, Guideline 89 asks Member States to strengthen cooperation between courts and agencies by means of bilateral and multilateral arrangements, with the objective of

facilitating the cross-border recovery of foreign assets and the enforcement of decisions. Here again, the Guidelines make reference to other, existing standards protecting consumers from fraudulent cross-border practices, such as the OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices. A last group of “cooperation” Guidelines encourages Member States to work together to promote capacity building in the field of sustainable consumption, and to facilitate cooperation between consumer groups by means of education and information programmes (Guidelines 91–93).

These are the objectives set out by the Guidelines – but what about the progress made towards them? We still do not have a formal implementation assessment *post* 2015, but the UNGCP Implementation Report of 2013 provides a picture of the status quo back then. Overall, it shows that cooperation had developed in different ways between countries and relevant agencies over the previous decades. At the bilateral cooperation level, several agreements exist, including the Chile–EU and Chile–Peru agreements,<sup>13</sup> which often cover training and assistance programmes or exchange of information in the field of consumer protection. At the regional level, UNCTAD has promoted cooperation in the field of consumer protection by means of initiatives like the Competition and Consumer Protection Programme for Latin America (COMPAL) and the MENA Programme for Middle East and North African countries.<sup>14</sup> Other organizations that have stimulated cooperation are the Organization of American States with its Consumer Safety and Health Network (CSHN),<sup>15</sup> the Committee on Consumer Protection of the Association of Southeast Asian Nations (ASEAN),<sup>16</sup> and the African Consumer Dialogue (UNCTAD Manual 2017). In addition, multilateral initiatives have been developed in this area by groups of institutions, such as the International Consumer Protection and Enforcement Network (ICPEN), which connects consumer protection agencies from over 70 countries.<sup>17</sup> ICPEN’s mandate is to co-ordinate enforcement matters, share information on trends and risks, and exchange ideas on existing best practices in the field of consumer law.

Despite the increasing number of cooperation activities in consumer protection, challenges remain, especially with regard to dispute resolution at the cross-border level due to lack of clarity on applicable laws and jurisdictions and divergences between legal systems (Izaguerrri Vila 2019; UNCTAD Manual 2017). This calls for the creation of international instruments that encourage cross-border consumer dispute resolution. An interesting cooperation project at the EU level in this regard is the ECC Net<sup>18</sup> which is present in the 28 EU Member States (as well as Iceland and Norway) and provides consumers with advice and support helping them to resolve cross-border disputes. The network centres are hosted either by national consumer protection authorities or by consumer associations in charge of informing consumers about their rights and providing assistance for complaint handling. This network exemplifies how cooperation between countries can facilitate dispute resolution at the cross-border level and might inspire similar initiatives in the future in other regions.

<sup>13</sup> The EU–Chile Association Agreement includes a free trade agreement that entered into force in February 2003. For more information, see: <https://ec.europa.eu/trade/policy/countries-and-regions/countries/chile/>; for the Chile–Peru Agreement see: <https://www.sernac.cl/portal/604/w3-article-1100.html> (accessed in 2019).

<sup>14</sup> See <https://unctadcompal.org/> and <https://unctadmena.org/activities/> (accessed in 2019).

<sup>15</sup> <http://portal.oas.org/en/sla/cshn/default.asp> (accessed in 2019).

<sup>16</sup> <https://asean.org/archive/the-asean-committee-on-consumer-protection-accp/> (accessed in 2019).

<sup>17</sup> <https://www.icpen.org/protecting-consumers-worldwide>.

<sup>18</sup> [https://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/european\\_consumer\\_centre\\_network/index\\_en.htm](https://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/european_consumer_centre_network/index_en.htm) (accessed in 2019).

## Institutional Machinery

One of the most important innovations of the revised UNGCP is a new Section VII on an international institutional machinery. Guideline 95 establishes an Intergovernmental Group of Experts on consumer protection law and policy (IGE) which has numerous functions. First of all, it is to provide an annual forum in which Member States can discuss and exchange opinions on the UNGCP, particularly on their implementation and experiences (Guideline 97 a). Then, it will lead periodic research studies and undertake voluntary peer reviews on consumer protection in specific countries (Guideline 97 b and c). Furthermore, the IGE will provide data and information on the attainment of the Guidelines' objectives and on their implementation by Member States, also offering capacity building support to economies in transition and to developing countries (Guideline 97 d and e). Other important functions of the IGE include the assessment of relevant studies from international organizations, exchanging work programmes and information, the drafting of reports and recommendations on national consumer protection policies, and periodical reviews of the UNGCP (Guideline 97 f–i).

While the IGE has a mandate to deal with a wide range of consumer protection areas, Guideline 98 imposes some limitations. Notably, it requires the IGE not to judge the activities of individual countries or companies with regard to specific transactions. In addition, it should not become involved in business-related disputes. This reflects the cautious approach taken during the revision process by some Member States, which focused on international exchange of information and cooperation, rather than opting for more interventionist or binding options. Several civil society groups had argued in favour of a more far-reaching mandate of the UN, but overall, they failed to gain enough support from Member States (Izaguerra Vila 2019).

As of 2019, the IGE had already held four sessions in Geneva. Three features arguably make the IGE particularly influential in improving consumer protection. First, it offers a forum for multilateral discussions and consultations on relevant consumer protection topics. This will likely help to identify systemic issues leveraging datasets and reports harvested across multiple States. Specific topics discussed in past expert meetings include the challenges of the collaborative economy, financial consumer protection, e-commerce, dispute resolution, and product safety.<sup>19</sup> On the back of these meetings, the IGE created several working groups to promote in-depth discussion on core areas of consumer protection. These groups usually meet remotely throughout the year and some, like the working group on electronic commerce, have the mandate to develop policy recommendation (UNCTAD 2017; Izaguerra Vila 2019).

Second, the IGE can carry out voluntary peer reviews, following a UN model that has already proved its efficacy in the area of competition law (Lianos 2007). Peer reviews aim to provide independent evaluations of consumer protection systems. They highlight challenges faced by particular institutional and legal frameworks, and formulate recommendation to address them (UNCTAD 2017b). In consumer law, the IGE has discussed several peer reviews, assessing consumer protection in Morocco and Indonesia. These reviews provided feedback to these countries on the state of their consumer protection framework and created new incentives for reform (UNCTAD 2019). Third, and most importantly, the IGE will carry out periodical reviews of the Guidelines. Such an automated review process was missing from the previous UNGCP so that earlier Guidelines were rarely updated and then only on an ad hoc basis (Izaguerra Vila 2019). The new revision mechanism will instead ensure that UN

<sup>19</sup> For example for the first meeting of the IGE see <https://unctad.org/en/Pages/MeetingDetails.aspx?meetingid=1060> (accessed in 2019).

Guidelines are evaluated regularly and remain up to date in the face of new developments (UNCTAD Manual 2017).

## The Legal Nature and Role of the Guidelines

The revised UNGCP were adopted by the United Nations General Assembly (Resolution 70/186) and are of a non-binding nature (Schwebel 1979). As the United Nations General Assembly lacks enforcement powers, the Guidelines cannot be enforced against individuals, companies, or Member States (Boyle and Chinkin 2007; Law 2018). Therefore, the Guidelines can only be regarded as an international soft law instrument (Law 2018; Schaffer and Pollak 2010), following a common international trend (Schaffer and Pollak 2010). Soft law instruments have broadly been defined as “law-like promises or statements that fall short of hard law” (Guzman and Meyer 2010). They are used as a “tool of persuasion,” as opposed to hard law that relies more on a coercive approach (Klabbers 2005). The effectiveness of a particular soft law depends on many factors, including its content, the context and the selected type of instrument. Although not legally binding, the resolutions by the UN General Assembly can exert some authority as they help to identify common key provisions and obligations that are likely to shape the expectations of Member States and affect their behaviour (Guzman and Meyer 2010).

According to the UNGCP “Member States should take appropriate steps at the national or regional levels to implement these guidelines” (Guideline 96). In particular, according to Guideline 4, they should “develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines” and international agreements. However, a large amount of discretion is left to Member States on how to transpose the Guidelines into national law, as they are encouraged to set their own priorities “in accordance with the economic, social and environmental circumstances of the country.” This indicates that the Guidelines are intended to be a set of voluntary recommendations for Member States to adopt specific measures rather than being of a compulsory nature (Harland 1997). The same can be inferred from the Guidelines suggesting that governments take actions that are in accordance with the specific needs of its population and after an evaluation of the costs and benefits of proposed measures.

The adoption of such a soft law instrument can be regarded as the result of a compromise between the preferences of different Member States (Abbott and Snidal 2000; Schaffer and Pollak 2010). Indeed, the adoption of the first Guidelines was not without resistance, and broadening the scope even further in 2015 was only possible because of the non-binding nature of the instrument. The soft law nature arguably weakens the legal force of the Guidelines from an international law perspective but does not stop them from having an effect on international and national regimes (Deutch 1994; Harland 1997). The implementation reports of the Guidelines by the UN show that Member States have been inspired by the Guidelines to evaluate and develop their consumer protection systems. While this is especially true for developing countries, the Guidelines have also influenced other Member States, as will be explored in the next section. Furthermore, the very fact that the Guidelines were strengthened and expanded in 2015 confirms that this initiative is still influential and carrying momentum. At a more general level, it confirms that consumer law is becoming a prime topic of international law and not only a matter of national law. In addition, from an international law perspective, two further implications are emerging. First, the growing recognition at the international level may suggest that consumer protection is gradually becoming a topic of

human rights issues that require universal protection (Benöhr 2013; Deutch 1994). Second, the Guidelines and the reaffirmation of their validity over the decades could contribute to customary international law obligations and could be further developed in more binding international law instruments (see, e.g., Guzman and Meyer 2010; Lianos 2007, for the field of antitrust law). The next sections will evaluate the impact of the Guidelines since their adoption and identify new avenues to further strengthen consumer protection in the future.

## The Impact of the Guidelines

Although the Guidelines are of a soft-law nature, they have had a non-negligible impact on national and global consumer protection in at least four ways. First, as briefly mentioned above, the Guidelines had an influence on the development of national and regional consumer protection, in particular, in transitioning and developing countries. The UNGCP have been instrumental in specific countries evaluating and strengthening their regimes, or even establishing them where they were missing altogether (Law 2018). At the regional level, UNCTAD created several related programmes, including the COMPAL programme for Latin America, MENA for Middle East and North Africa technical assistance, and the Central African Economic and Monetary Community regional programme. These programmes helped to promote competition and consumer protection laws and policies, taking the Guidelines as a foundation. The Guidelines have also likely inspired a number of countries to introduce consumer protection in their national constitutions. As pointed out by UNCTAD's implementation report, after the establishment of the Guidelines, Peru, Spain, Portugal, Poland, and Mexico all incorporated consumer protection in their constitutions. Although the constitutional provisions across countries vary significantly, they typically contain high-level principles or broad consumer protection provisions that reflect the UNGCP's "legitimate needs" section. These provisions include, among others, the protection from hazards to the consumers' health and safety, the protection of their economic interests, and access to information. In turn, the high-level constitutional recognition by Member States is relevant in several ways: First, constitutional provisions can sometimes be used as a basis for creating or adopting institutional and legal frameworks (for the example of Brazil see Lima Marques 2017, pp. 103–104).<sup>20</sup> Second, they may be applied by consumer organizations to campaign for a change in the law or to support strategic litigation cases (UNCTAD Manual 2017). Finally, specific high-level constitutional provisions may help to strengthen the legal position of consumers as the weaker party in a dispute (Benöhr 2013, pp. 71–72).

While the United Nations Guidelines have influenced the development of general consumer law, their impact on specific areas of consumer protection is more varied. For example, UNCTAD's implementation report shows discrepancies between areas such as product safety on one hand, which has largely been regulated at national level, and sustainable consumption on the other, that instead has gained relatively little relevance as a matter of consumer law.<sup>21</sup> Although the Guidelines include "very extensive" recommendations with regard to sustainable consumption, this topic has often remained outside the competence of consumer protection

<sup>20</sup> In Brazil, the Federal Constitution (1988) mentioned the creation of a Consumer Protection Code, which was adopted in 1990.

<sup>21</sup> See the Implementation report on the United Nations Guidelines on Consumer Protection (1985–2013), UNCTAD Secretariat 2013).

authorities (UNCTAD's implementation report 2013).<sup>22</sup> This naturally descends from the UNGCP's soft law nature, meaning that they are not legally binding on Member States.

Second, having been adopted by consensus, the Guidelines have created a moral force and raised sensitivity to consumer issues, providing consumer organizations with a useful basis from which to promote further reform (Harland 1997). For example, Consumer International (CI), the global federation of consumer organizations representing consumer interests in key international organizations, has frequently referred to the Guidelines and used them as a source of inspiration to promote the development of consumer protection law at the national level.<sup>23</sup>

Third, the United Nations' work inspired the development of other international and regional consumer protection guidelines (Law 2018). For example, the OECD has established a Consumer Policy Committee that drafts consumer protection guidelines and offers a forum for discussion among Member States. In 1999, this body produced a set of Guidelines for Consumer Protection in the Context of Electronic Commerce and, in 2018, for the G20/OECD Policy Guidance on Financial Consumer Protection Approaches in the Digital Age.

Fourth and last, the UNGCP have influenced the development of cross-border cooperation at the regional level. For example, the year 2009 saw the adoption of the South African Development Community's Declaration on Regional Cooperation in Competition and Consumer Policies. Likewise, the Association of South East Asian Nations (ASEAN) Committee on Consumer Protection cooperation explicitly mentions the UNGCP as a reference point for the development of a common consumer protection approach (ASEA 2018).

## Limitations and Future Development

Given the challenges that consumers face at the cross-border level, an important question is whether the existing Guidelines provide an effective and practical solution in this wider context. While the previous sections of this article have focused on the impact of the Guidelines, this section discusses several limitations and areas of consumer law where there is a strong case for future development.

First and foremost, as mentioned previously, the Guidelines are soft law. Despite the new institutional machinery that aims to encourage and monitor their implementation, the Guidelines are not binding. A manifestation of these limitations is the mixed implementation of the Guidelines at the national level depending on the specific area of consumer law. For example, sustainable consumption has rarely been incorporated by Member States as a matter of consumer law, although the Guidelines provide detailed recommendations in this regard. Second, the IGE is restricted in its mandate. In particular, it has to refrain from judging the specific transactions of individual companies and from getting involved in business-related disputes (Guideline 98). At the same time, recent international studies showed that consumers struggle to apply the protective framework in practice (Consumer International 2013; Hunter and Riefa 2017). Cross-border redress is still problematic, and so is litigation funding (Durovic and Micklitz 2017; Pearson 2017). Third, although the revised Guidelines established a new institutional machinery, they were not allocated any new resources. Instead the UN General

<sup>22</sup> According to UNCTAD's implementation report, only Salvador, Mexico, and the United States have provided a mandate to their consumer authorities to promote sustainable consumption, whereas in most other countries, this area is covered by their environmental protection ministries, 2013, pp. 13 and 14 cover this topic.

<sup>23</sup> See: [www.consumersinternational.org](http://www.consumersinternational.org) (accessed in 2019).

Assembly required that resources should come “through the reallocation of existing resources,” or from external entities in the form of “voluntary contributions” ([Resolution 70/186, 2015](#)). Finally, while there has been much progress in a few specific areas, the Guidelines could be more comprehensive with regard to others, such as product liability and housing rights (Harland 1997). Although product safety is covered in the Guidelines, there seems to be a gap when it comes to product liability and compensation of consumers who may be harmed by defective products (Harland 1997, pp. 11). A recent international report revealed a low satisfaction level among consumers with current product safety provisions (Consumer International 2018). New technological developments and e-commerce have increased cross-border trade, which provide consumers with more choice and cheaper products. However, this can also give access to products of lower safety and quality standards, creating new surveillance and enforcement challenges for national authorities (Consumer International 2018), and making it more difficult to identify responsibilities when products are traded across borders. This is particularly relevant when counterfeit products may cause significant harm, as in the case of toys, electrical appliances, or even medicines, suggesting the need for stronger regulation and enforcement mechanisms supported by cooperation between Member States.

Another challenge that has become apparent since the financial crises is consumer over-indebtedness which can lead to extremely disruptive and harmful consequences like the loss of a home (Benöhr 2018). In Europe, in particular, the courts had to deal with a marked increase in foreclosure cases where questions were raised with regard to unfair contractual terms, procedural fairness in mortgage enforcement proceedings, and the right to a home (Della Negra 2015). In Kušionová (2014), the Court of Justice of the European Union (CJEU) recognised the right to accommodation as a fundamental right, which has to be taken into consideration when the Directive on Unfair Terms in Consumer Contracts is implemented. This interpretation of the law reflects a growing trend towards recognising the right to housing as an important aspect of consumer protection (Kenna and Simón-Moreno 2019). The UN Guidelines instead, while taking a broad approach to consumer law, do not deal with housing-related rights and debt management. These latter aspects could benefit from further attention in a new evaluation of the Guidelines.

Possible further solutions to some of the limitations mentioned previously range from closer cooperation by agencies to the establishment of dispute resolution networks (such as the ECC Network). The establishment of new bodies in the form of ombudsman or mediation services has been particularly successful in facilitating dispute resolution. However, these would need to comply with strict quality requirements with regard to independence, expertise, disclosure, and fairness (Hodges et al. 2012).

At present, there does not seem to be an appetite for a more binding comprehensive international framework, but this does not mean that a new trend in this direction may not develop to support consumer protection in specific areas (Wei 2017). Developments in this area could be based on the principles stated in the “legitimate needs” section of the UNGCP, which covers many areas of consumer protection, ranging from economic interest, to product safety and access to justice. For example, there already is an ongoing effort by the United Nations World Tourism Organization and the Hague Conference on Private International Law, to develop an international agreement to protect tourists (Sanches Lima 2017).<sup>24</sup> Similar trends may follow in the future, in particular, in areas of consumer protection in which countries have

<sup>24</sup> [www2.unwto.org](http://www2.unwto.org) (accessed in 2019).



struggled to protect consumers effectively at the cross-border level, such as electronic commerce and dispute resolution.

Trade agreements could become a relevant tool to strengthen consumer law through binding commitments. At the current state, they often fail to deal with central issues of consumer protection (Hunter and Riefa 2017). In turn, the integration of specific chapters setting minimum consumer protective requirements could help to boost the protection and trust of consumers in cross-border goods.

## Conclusion

The UNGCP provide an international framework for consumer protection, including minimum consumer standards and cooperation provisions for Member States. Since the 2015 revision, the Guidelines now cover more areas of consumer protection and define an institutional machinery in charge of promoting the cooperation and implementation of the Guidelines. The new UNGCP also shows a clear shift in focus. While initially directed to Member States, they now also directly address companies, encouraging best practice and corporate responsibility. In addition, the Guidelines seem to converge towards a more inclusive and broader consumer protection model as new provisions aim to protect the vulnerable consumer and deal with access by consumers to essential utilities.

Overall, the UNGCP have been upgraded from the previous version and have great potential to further improve consumer protection at the international and national level. They are unique as they aim to provide standards covering the most relevant aspects of consumer protection, and have proved to be a reference point for both developing and developed countries. While other international organizations have become equally active in this space, they typically only cover restricted areas of consumer protection, stopping short of defining a comprehensive framework, or covering only narrow regions. As the Guidelines were adopted by consensus, they carry a strong moral force and have already had a non-negligible effect at the Member States and regional level. This impact has been supported and amplified by the active contribution of the UN as promotor of intergovernmental cooperation and “capacity builder.” As a result, consumer protection has gained international attention as an area of law and policy that needs to be addressed globally, rather than regulated purely at the national level.

Despite being so impactful, the Guidelines remain a soft law instrument with some limitations with regard to implementation and enforcement. This raises the question of whether a more binding legal mechanism, or increased institutional innovation, could further strengthen consumer protection at the international level. This article has identified some avenues for change and improvement in this direction. For the time being, the UNGCP can be regarded as an important step towards recognizing consumer law as a prime area of international law, and a force inspiring change. However, only time will show whether the Guidelines’ soft law approach will be able to coalesce Member States and institutions in resolving the practical challenges faced by the global consumer.

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