



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
ECONOMIC AND SCIENTIFIC POLICY **A**



Consequences of Brexit in the Area of Consumer Protection

Economic and Monetary Affairs

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**Internal Market and
Consumer Protection**

Consequences of Brexit in the Area of Consumer Protection

Study for the IMCO Committee



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

Consequences of Brexit in the Area of Consumer Protection

STUDY

Abstract

This paper outlines the consequences of the United Kingdom's withdrawal from the European Union in the area of consumer protection. It examines the withdrawal's impact on consumer protection under different scenarios: a future EEA membership of the UK (a); a relationship governed only by WTO rules; (c) a relationship governed by a "tailor-made agreement". It comes to the conclusion that from the perspective of consumers in the EU28, an EEA membership of the UK is the most favourable scenario. Irrespective of the scenario, adequate transitory provisions taking into consideration the "two-step" negotiating schedule are necessary to resolve legal uncertainties occurring irrespective of the scenario.

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AUTHOR(S)

Dr. Malte KRAMME, Research Centre for Consumer Law, University of Bayreuth

RESPONSIBLE ADMINISTRATOR

Mariusz MACIEJEWSKI
Policy Department for Economic, Scientific and Quality of Life Policies

EDITORIAL ASSISTANT

Laurent HAMERS

LINGUISTIC VERSIONS

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ABOUT THE EDITOR

Policy departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact Policy Department A or to subscribe to its newsletter please write to:

Policy Department A: Economic and Scientific Policy

European Parliament

B-1047 Brussels

E-mail: Poldep-Economy-Science@ep.europa.eu

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EXECUTIVE SUMMARY

“EEA Model”

- From the perspective of consumers in the EU28, an EEA membership of the UK is the most favourable Brexit scenario. It would ensure the application of the high European consumer protection standards for consumers in the EU27 and in the UK to a very large extent.
- The contractual mechanism for the adoption of new EU secondary legislation ensures a wide coverage of EU consumer protection law by EFTA States.
- The most relevant acts which are not covered by the EEA-model are those in the field of Judicial Cooperation in Civil Matters. This includes Brussels I bis Regulation No (EU) 1215/2012), Uncontested Claims Regulation No (EC) 805/2004, Order for Payment Procedure Regulation No (EC) 1896/2006/EU, Small Claims Regulation No (EC) 861/2007, Legal Aid for Cross-Border Disputes Directive (2003/8/EC), Regulation No (EC) 593/2008 (“ROME I”) as well as Regulation No (EC) 864/2007 (“ROME II”). With regard to the Regulations governing the applicable law, in particular with regard to the ROME I, this gap is only of minor relevance as the consumer protection level in contract law is comparable due to the far reaching harmonisation in this field.
- Moreover, instead of the Brussels I bis Regulation, the Lugano Convention (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) applies and closes partly the gap that the Brussels I bis Regulation leaves.
- Further, the transition after the UK’s withdrawal from the EU to a participation in the European single market by means of the EAA Agreement can be expected to be rather uncomplicated.
- However, as the EAA Agreement obliges the EFTA member states to a strict adoption of EU legislation with only an advisory role in the legislation process, the model seems to be rather incompatible to the intention of Brexit proponents to strengthen UK’s sovereignty.

“WTO Model”

- The membership of the UK ends two years after the notification of the withdrawal. From this time on the UK is neither bound nor entitled by EU law. This circumstance has to be separated from the question whether or not EU law will still apply under the UK legal order. This depends, inter alia, on how the UK legislator administers the withdrawal procedure. According to the current public available plans for the Great Repeal Bill, the UK government plans to revoke the European Communities Act of 1972. To avoid that as a consequence directly applicable EU law ceases to apply, it is planned to convert such directly-applicable EU laws into UK law. Moreover, UK primary legislation implementing EU Directives remain part of the UK legal order until such legislation is revoked.
- However, from the time of withdrawal the consumer protection legislation of the EU and the UK are likely to drift apart. Even if the UK autonomously adopts all EU legislation in the field of consumer protection, interpretation of such legislation will differ, as the UK courts will not be subordinated to the European Court of Justice.
- As it is unclear, how the consumer protection level in the UK will develop, the protection of EU27 consumers by means of EU consumer law will depend on the applicability of EU consumer protection law and its enforceability.

- The applicable regime for questions of jurisdiction, conflict-of-laws and enforceability is uncertain after Brexit. It is recommended to ensure the necessary legal clarity in the withdrawal and/or future relationship agreement. One option to ensure such clarity is to declare the Brussels I bis Regulation and the ROME I Regulation applicable for courts in the EU and the UK for all cross-border disputes concerning a Member State and the UK.
- Sector-specific regulation with consumer protection relevance often applies irrespective if the obliged person is residing within the EU or in a third country. Difficulties to be solved in an agreement with the UK concern predominantly questions of cross-border cooperation of supervisory authorities and questions of cross-border enforcement.

“Tailor-Made Agreement Model”

- Free-trade agreements as such do not undermine the consumer protection level. If consumer issues arise depend on the content of such agreements. In particular, mutual recognition rules should only be concluded, if the equivalence of recognised standards is ensured. Further, investment protection rules bear a potential consumer protection risk if their scope is so broad that they hinder to enact, apply and enforce reasonable consumer protection regulation.
- The situations of Switzerland and of post-Brexit UK are to a certain extent comparable, as both European countries do not aim to become EU or EEA members, but have a vivid interest to enjoy an access to the European single market. However, as Switzerland enjoys a wider discretion than other EFTA Members as to whether EU consumer protection legislation shall be adopted or not, the harmonisation of standards cannot be achieved in all areas of consumer protection.

Transitory Provisions and further topics of EU-UK Agreements

- The EU plans to finalise two agreements, the withdrawal agreement to be concluded before the withdrawal takes effect and the future relationship agreement to be concluded once the United Kingdom is no longer a Member State.
- Legal uncertainties in the transition period can be avoided if the withdrawal agreement provides for a time-limited prolongation of EU consumer protection acquis meeting the requirements of the Draft negotiation guidelines (“existing Union regulatory, budgetary, supervisory and enforcement instruments and structures to apply”) until the future relationship agreement comes into force.
- The future relationship agreement should contain transitory stipulations providing for an orderly transition from the pre withdrawal to the post withdrawal legal regime.
- Finding suitable transitory provisions requires a review of the specific legislations in question analysing if provisions cushioning the immediate impact of the transition from the legal situation before the withdrawal to the situation after the withdrawal are necessary. This requires an analysis of the currently unknown settlements of the future relationship agreement. Such an analysis should also take into account the protection of legitimate expectation of consumers and professionals as well as the legal clarity in the transitory period.
- A need for transitory provisions can occur, in particular, in the field of consumer contract law and with regard to the applicable conflicts-of-law regime.
- Moreover, the competences of the European Court of Justice for cases falling in the transition period need to be clarified. The European Court of Justice should remain

competent for “UK-cases” pending at the time of withdrawal as well as for cases that are not pending at the time of withdrawal, but that are still governed by EU law.

- Further, the future relationship agreement should address the legal uncertainty occurring with regard to jurisdiction, conflict-of-laws and enforcement of judgments, possible protection gaps for EU27 consumers traveling to the UK and cooperation of authorities in the field of sector-specific regulation.
- If the future relationship agreement follows the concept of an “ambitious free trade agreement”, it should be ensured that the high consumer protection level will not be undermined. For example, mutual recognition rules should only be concluded, if the equivalence of recognised standards is ensured. Further, investment protection rules must be drafted in a way that they do not hinder to enact, apply and enforce reasonable consumer protection regulation.

1. INTRODUCTION

This paper examines the consequences of the United Kingdom's withdrawal from the European Union in the area of consumer protection.¹ It gives an overview of different possible models for the future EU-UK relationship from the perspective of consumer protection. The paper highlights the main differences concerning consumer protection between the possible scenarios. It addresses the overarching question what consequences Brexit may have on the *acquis* in the area of consumer protection. The overview focuses on EU consumer contract law and certain sector specific legal frameworks such as product safety, transport and financial services. The impact analysis in this paper is made from the perspective of consumers in the remaining EU27 in cross-border transactions with traders residing in the UK.

The British Prime Minister announced its intention to notify its withdrawal from the EU before the end of March 2017. According to Article 50 (2) TEU the EU shall in this case negotiate and conclude an agreement with the UK, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.

Such a Future EU-UK Relationship Agreement may be based on role models of existing association agreements between the EU and third countries. The models introduced in this paper are

- the EEA (or Iceland, Liechtenstein and Norway) Model,
- the WTO-Model and
- a model based on a "tailor-made agreement".

¹ For a broad overview of legal consequences of Brexit, see Kramme/Baldus/Schmidt-Kessel (ed.), *Brexit und die juristischen Folgen, Privat- und Wirtschaftsrecht der Europäischen Union* (Nomos 2017); for the UK perspective, see Gordon/Moffatt, *Brexit: The Immediate Legal Consequences* (2016); *London School of Economics and Political Science, Centre of Economic Performance* (ed.), *Brexit 2016: Policy analysis from the Centre of Economic Performance* (2016).

2. EEA MODEL

KEY FINDINGS

- From the perspective of consumers in the EU28, the EEA model is the most favourable Brexit scenario. It would ensure the application of the high European consumer protection standards for consumers in the EU27 and in the UK to a very large extent.
- The contractual mechanism for the adoption of new EU secondary legislation ensures a wide coverage of EU consumer protection law by EFTA States.
- The most relevant acts which are not covered by the EEA-model are those in the field of Judicial Cooperation in Civil Matters. This includes Brussels I bis Regulation (No (EU) 1215/2012), Uncontested Claims Regulation No (EC) 805/2004, Order for Payment Procedure Regulation No (EC) 1896/2006/EU, Small Claims Regulation No (EC) 861/2007, Legal Aid for Cross-Border Disputes Directive (2003/8/EC), Regulation No (EC) 593/2008 ("ROME I") as well as Regulation No (EC) 864/2007 ("ROME II"). With regard to the Regulations governing the applicable law, in particular with regard to the ROME I, this gap is only of minor relevance as the consumer protection level in contract law is comparable due to the far reaching harmonisation in this field.
- Moreover, instead of the Brussels I bis Regulation, the Lugano Convention (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) applies and closes partly the gap that the Brussels I bis Regulation leaves.
- Further, the transition after the UK's withdrawal from the EU to a participation in the European single market by means of the EEA Agreement can be expected to be rather uncomplicated.
- However, as the EEA Agreement obliges the EFTA member states to a strict adoption of EU legislation with only an advisory role in the legislation process, the model seems to be rather incompatible to the intention of Brexit proponents to strengthen UK's sovereignty.

2.1. Overview

Norway, Iceland and Liechtenstein are associated with the EU by the European Economic Area (EEA) Agreement.² It was signed on 2 May 1992 and came into force on 1 January 1994. It expands the four fundamental freedoms (free movement of persons, services, goods and capital) to the citizens of these countries.³ The aforementioned countries are also obliged to an autonomous adaption of the EU secondary law.⁴ However, according to Article 112, the non-EU member states can, as contracting parties, take safeguarding measures if "serious

² For an overview on this model, see also *Dhingra/Sampson*, Life after BREXIT : What are the UK's options outside the European Union), in: *Brexit 2016: Policy analysis from the Centre of Economic Performance* (2016), p. 3 et seq.

³ *Forsthoff* in Grabitz/Hilf/Nettesheim, *Das Recht der Europäischen Union*, 60. Ergänzungslieferung 2016, Art. 45 AEUV, para. 42.

⁴ Subject to Annexes V to IX, EEA Agreement.

economic, social or environmental difficulties of a sectorial or regional nature liable to persist are arising.”⁵

How a participation of the UK in the EEA after the withdrawal from the EU would be administered remains unclear in details. Contracting parties of the EEA Agreement are the EU and its Member States on the one side and the Member States of the European Free Trade Association (EFTA), except Switzerland, on the other side. Accordingly, the UK is currently a contracting party of the EEA Agreement. However, the EEA Agreement is set up as an agreement between the EU and its member states and the EFTA member states. Based on this prerequisite, Article 126 EEA Agreement states that the Agreement shall apply to the territories in which the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community is applied (...), and to the territories of EFTA member states. The consequences of a contracting party's withdrawal from the EU are not foreseen. For the time being, the legal opinion prevails that an EFTA membership of the UK would be required to re-join the EEA Agreement.⁶ This presupposes a unanimous vote of all EFTA member states in the EFTA council (see Article 56 (1) and Article 43 (5) EFTA Convention). Norway, however, is said to have reservations against an EFTA membership of the UK.⁷ To avoid the described legal uncertainty, the UK could consider to withdraw from the EEA Agreement if it does not pursue an EEA membership. According to Article 127 EEA the withdrawal takes effect 12 month after the notification.

2.2. Consumer Protection through EU Primary Law

The EEA Agreement consists of the main agreement, 49 protocols and 22 Annexes.⁸ The main agreement is subdivided into nine parts. Parts I to IV are equivalents to corresponding provisions in the TFEU.⁹ Hence, they ensure the extension of a substantial part of EU primary law to the EEA area. In particular, part II (Articles 8 to 26) covers the free movement of goods while part III (Articles 27 to 52) covers the free movement of persons, services and capital. While Part IV contains provisions regarding competition and state aid, Part V contains horizontal provisions relevant to the four freedoms.¹⁰

Given that the single European market concept is one of the main pillars of EU consumer protection,¹¹ the EEA model would ensure consumer protection in this regard. On the contrary, the EEA Agreement does not contain a direct equivalent to Article 12 TFEU serving as a justification for restrictions of the fundamental freedoms. However, this gap can be compensated by the preamble stating that the contracting parties are “DETERMINED to

⁵ The conditions and procedures of such safeguarding measures are laid down in further detail in Article 113 EEA Agreement.

⁶ See *Müller-Graff*, Brexit – die unionsrechtliche Dimension in: Kramme/Baldus/Schmidt-Kessel (2017), p. 33 (54); *Basedow*, Brexit und das Privat- und Wirtschaftsrecht, ZEuP 2016, 567; *Rathke*, Brexit und die Arbeitnehmerfreizügigkeit in: Kramme/Baldus/Schmidt-Kessel (2017), p. 211 (221).

⁷ See *Müller-Graff*, Brexit – die unionsrechtliche Dimension in: Kramme/Baldus/Schmidt-Kessel (2017), p. 33 (54); <http://www.sueddeutsche.de/politik/brexit-briten-sind-nicht-willkommen-1.3130430>, last access to website: 11 February 2017. However, it is also argued that a withdrawal from the EU would not affect the member status of the UK in the EEA, see *Daragan*, Brexit und EWR-Abkommen, ZErB 2016, 281. However, the UK could terminate its membership in the EEA within one year after a respective notification according to Article 127 EEA Agreement.

⁸ *Graver*, Der Europäische Wirtschaftsraum, in: Hatje/Müller-Graff (Hrsg.), Enzyklopädie Europarecht, Band 1, § 19; for a list of all documents, see <http://www.efta.int/legal-texts/eea>, last access to website: 10 February 2017.

⁹ *Graver*, Der Europäische Wirtschaftsraum, in: Hatje/Müller-Graff (Hrsg.), Enzyklopädie Europarecht, Band 1, § 19, para. 6.

¹⁰ However, differences to the EU single market remain. See *Graver*, Der Europäische Wirtschaftsraum, in: Hatje/Müller-Graff (Hrsg.), Enzyklopädie Europarecht, Band 1, § 19, para. 14 et seq.

¹¹ See *Schmidt-Kessel*, Verbraucherschutzrecht in der EU, in: Gebauer/Teichmann (Hrsg.), Enzyklopädie Europarecht, § 4, recital 53 et seq.

promote the interests of consumers and to strengthen their position in the market place, aiming at a high level of consumer protection" and by Article 6 EEA Agreement prescribing a corresponding interpretation of the fundamental freedoms.

2.3. Consumer protection through EU secondary law

The contracting parties implemented major parts of the EC *acquis* into the EEA Agreement as far as they were congruent with the Agreement's scope.¹² Moreover, the EEA Agreement also provides for a mechanism to dynamically adopt new (post-signing) EU secondary law:

- According to Article 98 EEA Agreement, the Agreement and the Protocols 1 to 7, 9 to 11, 19 to 27, 30 to 32, 37, 39, 41 and 47 may be amended by a decision of the EEA Joint Committee.
- Prior to this decision, the Commission informs EFTA states about plans for new legislation in a field which is governed by the EEA Agreement and seeks advice from experts of the EFTA States in the same way as it seeks advice from experts of the EU Member States for the elaboration of its proposals (Article 99 EEA Agreement).
- However, the EFTA member states have rather no influence on the decision making about such new legislation by the EU.¹³ On the contrary, Article 102 (1) EEA Agreement prescribes that "in order to guarantee the legal security and the homogeneity of the EEA, the EEA Joint Committee shall take a decision concerning an amendment of an Annex to this Agreement as closely as possible to the adoption by the Community of the corresponding new Community legislation with a view to permitting a simultaneous application of the latter as well as of the amendments of the Annexes to the Agreement."
- It has to be noted that such implementation is a lengthy procedure. A backlog of approximately 500 acts pending to be implemented is reported for recent years.¹⁴ Such delays shall occur due to time consuming negotiations between the three participating EFTA member states, the late submission of Joint Committee Decisions (JCDs) and, in 33% of all cases, negotiations of adaptations regarding institutional issues.¹⁵ Further, supervision of compliance with the obligations under the EEA Agreement differs from comparable EU mechanisms. In particular, the ECJ may only rule on disputes concerning the interpretation of provisions of the EEA Agreement or secondary acts if the contracting parties of the dispute agree to request such a ruling by the ECJ (see Article 111 (3) EEA Agreement).
- A further detriment of the legislation procedure of the EEA compared to EU legislation derives from the legal classification of EEA Joint Committee Decisions. As such decisions are not an equivalent to a legislative act, they need to be implemented by the EFTA member states into the respective legal orders (see Articles 7 and 104 EEA

¹² Graver, Der Europäische Wirtschaftsraum, in: Hatje/Müller-Graff (Hrsg.), Enzyklopädie Europarecht, Band 1, § 19, para. 7 points out, that 1,400 legal acts were initially comprised by the EEA *acquis*.

¹³ Dhingra/Sampson, Life after BREXIT: What are the UK's options outside the European Union), in: Brexit 2016: Policy analysis from the Centre of Economic Performance (2016), p. 4 identify in this lack of influence an important political drawback of adopting this model.

¹⁴ Pelkmans/Böhler, The EEA Review and Liechtenstein's Integration Strategy, p. 77, https://www.ceps.eu/system/files/EEA%20Review_Liechtenstein%20Final.pdf, access to website: 2 April 2017. See also Armour, Brexit to the EEA: What Would It Mean? in Eleftheriadis and others (ed.), 'Legal Aspects of Withdrawal from the EU: A Briefing Note' (14 July 2016) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2809285, last accessed: 2 April 2017.

¹⁵ Pelkmans/Böhler, The EEA Review and Liechtenstein's Integration Strategy, p. 77, https://www.ceps.eu/system/files/EEA%20Review_Liechtenstein%20Final.pdf, access to website: 2 April 2017.

Agreement).¹⁶ Hence, EU Regulations that are directly applicable in EU Member States are not *per se* directly applicable in EFTA Member States. Examples of EFTA Member States failing to implement EU Regulation in the given time periods can be found in the rulings of the EFTA court.¹⁷

2.3.1. Overview on the Consumer Protection *acquis*

Annex XIX to which Article 72 EEA Agreement refers governs consumer protection by secondary law. It lists the **vast majority of EU secondary legislation in the field of consumer protection**.

- With regard to contract law, EFTA member states are, in particular, bound to the Consumer Rights Directive, the Directive on Unfair Terms and Conditions as well as the Consumer Sales and Guarantees Directive. The new Directive on package travel (2015/2302/EU)¹⁸ and the Directive on credit agreements for consumers relating to residential immovable property (2014/17/EU)¹⁹ is currently under scrutiny for incorporation into the EEA Agreement by Iceland, Liechtenstein and Norway. The Draft Directive on certain aspects concerning contracts for the supply of digital content is also announced to be included to the EEA *acquis*.²⁰
- With regard to commercial practices, the EEA *acquis* includes, *inter alia*, the Unfair Commercial Practices Directive as well as the Directive concerning misleading and comparative advertising.
- With regard to enforcement of consumer protection, the EEA *acquis* includes the Directive on Injunctions for the Protection of Consumer Interests as well as the ADR Directive, the ODR Regulation and the Regulation on consumer protection cooperation.
- The EEA *acquis* comprises also sector-specific EU regulation, such as product safety, travel and transport and financial services.
- For further details, see the Table at the end of the document.

The most relevant acts which are **not covered** by the EEA-model are those in the field of **Judicial Cooperation in Civil Matters**. This includes:

- Brussels I bis Regulation (No (EU) 1215/2012),
- Uncontested Claims Regulation No (EC) 805/2004
- Order for Payment Procedure Regulation No (EC) 1896/2006/EU
- Small Claims Regulation No (EC) 861/2007
- Legal Aid for Cross-Border Disputes Directive (2003/8/EC)

¹⁶ *Bungenberg* in von der Groeben/Schwarze/Hatje, Europäisches Unionsrecht, 7. Auflage 2015, Art. 217, para. 89; *Hummer* in Dauses, EU-Wirtschaftsrecht, 40. EL Juni 2016, K. III. Para. 109a.

¹⁷ See for example, judgement of 31 May 2015, E-20/14 (Failure by a Contracting Party to fulfil its obligations – Failure to implement – Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea in the event of accidents); judgement of 28 January 2015, E-15/14, Failure by a Contracting Party to fulfil its obligations – Failure to implement – Regulation (EU) No 1007/2011 on textile fibre names and related labelling and marking of the fibre composition of textile products – Commission Delegated Regulation (EU) No 286/2012).

¹⁸ <http://www.efta.int/eea-lex/32015L2302>, last access to website: 13 February 2017.

¹⁹ <http://www.efta.int/eea-lex/32014L0017>, last access to website: 13 February 2017.

²⁰ <http://www.efta.int/eea/policy-areas/flanking-horizontal-policies/consumer-protection>, last access to website: 13 February 2017.

- Regulation No (EC) 593/2008 ("ROME I")
- Regulation No (EC) 864/2007 ("ROME II")

With regard to the Regulations governing the applicable law, in particular with regard to the ROME I, this gap is only of minor relevance as the consumer protection level in contract law is comparable due to the far reaching harmonisation in this field.

Moreover, instead of the Brussels I bis Regulation, the Lugano Convention (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) applies and closes partly the gap that the Brussels I bis Regulation leaves. However, it cannot fill this gap entirely. The Lugano Convention is inspired by Brussels I Regulation No (EC) 44/2001. Consequently, the latest changes introduced by the recast of the Brussels I (bis) Regulation (No (EU) 1215/2012) are not covered. This leads to differences in cross-border enforcement. The Brussels I bis Regulation provides for the more creditor friendly enforcement regime, as it allows the enforcement without a declaration of enforceability of the judgment, while the Lugano Convention still requires this so called *exequatur procedure*.²¹

²¹ Xandra Kramer in: Dickinson/Lein, The Brussels I Regulation Recast (2015), para. 13.187.

3. WTO-MODEL

KEY FINDINGS

- The membership of the UK ends two years after the notification of the withdrawal. From this time on the UK is neither bound nor entitled by EU law. This circumstance has to be separated from the question whether or not EU law will still apply under the UK legal order. This depends, *inter alia*, on how the UK legislator administers the withdrawal procedure. According to the current public available plans for the **Great Repeal Bill**, the UK government plans to revoke the European Communities Act of 1972. To avoid that as a consequence directly applicable EU law ceases to apply, it is planned to convert such directly-applicable EU laws into UK law. Moreover, UK primary legislation implementing EU Directives remain part of the UK legal order until such legislation is revoked.
- However, from the time of withdrawal the consumer protection legislation of the EU and the UK are likely to drift apart. Even if the UK autonomously adopts all EU legislation in the field of consumer protection, interpretation of such legislation will differ, as the UK courts will not be subordinated to the European Court of Justice.
- As it is unclear, how the consumer protection level in the UK will develop, the protection of EU27 consumers by means of EU consumer law will depend on the applicability of EU consumer protection law and its enforceability.
- The applicable regime for questions of jurisdiction, conflict-of-laws and enforceability is uncertain after Brexit. It is recommended to ensure the necessary legal clarity in the withdrawal and/or future relationship agreement. One option to ensure such clarity is to declare the Brussels I bis Regulation and the ROME I Regulation applicable for courts in the EU and the UK for all cross-border disputes concerning a Member State and the UK.
- Sector-specific regulation with consumer protection relevance often applies irrespective if the obliged person is residing within the EU or in a third country. Difficulties to be solved in an agreement with the UK concern predominantly questions of cross-border cooperation of supervisory authorities and questions of cross-border enforcement.

3.1. Overview

Irrespective of whether or not an agreement on the future EU-UK relation is closed, Article 50 (3) sets forth that “the Treaties shall cease to apply to the State in question from the date of entry into force two years after the notification.”²² Hence, a withdrawal without cushioning any of its possible negative consequences, sometimes referred to as “hard Brexit”, will occur if the negotiations are not successful in the period of two years. This automatism of withdrawal makes this scenario not unlikely to happen considering the rather short term of two years to come to an agreement. If it occurs, the relations between the EU and the UK are, from a legal perspective, comparable to the relations of the EU with other third countries. As the EU and the UK are WTO members, their relations with respect to trade issues would

²² Unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

be governed by the respective WTO rules.²³ It has however to be noted that it is unclear which exact effects the withdrawal of the UK from the EU will have on the UK's WTO member status and its relationship to other WTO members as the EU currently speaks for its Member States including the UK.

The WTO agreements prescribe for certain legal branches rules for regulatory cooperation of WTO member states. In this context, the Technical Barriers to Trade Agreement (TBT) (under Annex 1A of the Agreement Establishing the World Trade Organization) is noteworthy. The TBT Agreement aims at facilitating the trade in agricultural and industrial goods by stipulating rules for technical regulations, standards and conformity assessment procedures. Basically, such rules shall ensure that national trade regulation is non-discriminatory and follows legitimate interests of regulation.²⁴ The Sanitary and Phytosanitary Agreement (SPS) sets forth equivalent rules for food safety, animal and plant health protection.²⁵ Further WTO Agreements exist, in particular, in the sectors of financial services (General Agreement on Trade in Services (GATS) Annex on Financial Services), air traffic (GATS Annex on Air Transport Services) and telecommunications (GATS Annex on telecommunications). It is, however, not apparent that an application of such rules as such would raise concerns regarding the consumer protection level for EU27 consumers.

Consumer protection is more affected by the fact that irrespective of the WTO rules, the UK would neither be bound nor be entitled by EU primary and secondary law, when the membership of the UK in the EU and the EEA ends.²⁶ This circumstance has to be separated from the question whether or not EU law will still apply under the UK legal order. For the most legal fields this decision is up to the discretion of the UK legislator.²⁷ It has to be differentiated as follows:

- The EU primary law (the EU Treaties) ceases to apply. The single European market concept, including the fundamental freedoms, will no longer be applicable to the territory of the UK. It has, however, to be noted that according to Article 63 (1) TFEU the free movement of capital is also applicable in cases with a connection to third country. As a further consequence, unlike the EU (and its member states), the UK will not be bound by the consumer protecting provisions of the Treaties, notably by Article 12 TFEU and Article 169 TFEU. Such provisions do not provide for specific consumer protection measures, but contribute to a high consumer protection level of EU legislation. The circumstance that the UK legislator will not be bound by these provisions may give the UK legislator a wider discretion in terms of considering consumer protection issues in the legislation compared to the EU legislator. However, if this will have a measurable negative effect on the UK consumer protection level cannot be foreseen.
- EU Directives implemented into the UK legal order by **primary legislation** remain unaffected by the withdrawal as such. Consequently, such legislation will be applicable as it is prior to the withdrawal until it will be revoked or changed.

²³ For an overview on this model, see *Dhingra/Sampson*, Life after BREXIT: What are the UK's options outside the European Union, in: *Brexit 2016: Policy analysis from the Centre of Economic Performance* (2016), p. 6.

²⁴ See *Herdegen*, *Principles of International Economic Law* (2013), p. 223 et seq.

²⁵ For details see *Herdegen*, *Principles of International Economic Law* (2013), p. 215 et seq.

²⁶ See *Basedow* (no. 6), *ZEuP* 2016, p. 567 (570); *Falter/Rüdel*, *Brexit – Anwendbare Rechtsquellen und Auswirkungen auf Verträge*, *GWR* 2016, 475.

²⁷ However, the applicability of certain EU legislation requiring a cooperation between member states depends on the willingness of other member states to apply such rules vis à vis the UK. See *Ungerer*, *Brexit von Brüssel und den anderen Verordnungen zum Internationalen Zivilverfahrens- und Privatrecht* in: *Kramme/Baldus/Schmidt-Kessel* (no. 1), p. 297 (307).

However, such revocation is legally possible as the UK will no longer need to comply with EU laws.²⁸

- The (direct) applicability of **EU Regulations** as well as the applicability of **UK secondary legislation**, i.e. *Statutory Instruments*,²⁹ implementing EU Directives depends on the fate of the European Communities Act of 1972 giving such legal acts the necessary authority in the UK legal order. Directly applicable EU law would cease to apply if the European Communities Act is repealed.³⁰ For this reason the UK legislator does not only plan to revoke the European Communities Act of 1972 with the **Great Repeal Bill**, but is planning “to convert directly-applicable EU laws into UK law”.³¹ However, the UK legislator is not completely free to transfer EU Regulations in the national legal order. In particular, the applicability of certain provisions of EU law depend on the cooperation of Member States. This is for example the case for the Regulation No (EC) 2006/2004 enhancing the cooperation between Member States in the field of consumer protection. Hence, the post-Brexit applicability of such Regulations would require a respective consent in the withdrawal agreement.

Given this, at least in the long term, the consumer protection legislation of the EU and the UK are likely to drift apart.³² This occurs either due to further developments of the EU law or due to developments of UK law. Even if the UK autonomously adopts all EU legislation in the field of consumer protection, interpretation of such legislation will differ, as the UK courts will not be subordinated to the European Court of Justice.³³ Even the interpretation of pre-withdrawal EU-law will differ as the UK will only accept such rulings of the European Court of Justice as binding that existed on the day of the withdrawal.³⁴

Consequently, the protection of EU27 consumers by means of EU consumer law will depend on the applicability of EU consumer protection law which itself depends on the jurisdiction.³⁵ Further, the consumer protection in cross-border relations with the UK will depend on the enforceability of EU consumer rights in the UK.

²⁸ See *Gordon/Moffatt*, Brexit: The Immediate Legal Consequences, p. 23.

²⁹ See *Basedow* (n 6), ZEuP 2016, p. 567 (570).

³⁰ *Gordon/Moffatt*, Brexit: The Immediate Legal Consequences, p. 23; *Dickinson*, Journal of Private International Law, p. 195 (197); see also *Reif/David*, BREXIT – Auswirkungen auf Handel und Vertrieb, Zeitschrift für Vertriebsrecht (ZVertriebsR) 2017, p. 35.

³¹ Legislating for the United Kingdom's withdrawal from the European Union, Department for Exiting the European Union, p. 13, <https://www.gov.uk/government/publications/the-great-repeal-bill-white-paper/legislating-for-the-united-kingdoms-withdrawal-from-the-european-union>, last access to website: 11 April 2017.

³² A rather low impact on the short term is predicted by *Jeloschek*, Brexit en consumentenrecht: much ado about nothing, Bedrijfsjuridische berichten (Bb) 2016, p. 251 (253); see also *Forrest*, Brexit: key Issues for Business, Bedrijfsjuridische berichten (Bb) 2016, p. 276 emphasizing the need for a “regulatory review”.

³³ Legislating for the United Kingdom's withdrawal from the European Union, Department for Exiting the European Union, p. 15, <https://www.gov.uk/government/publications/the-great-repeal-bill-white-paper/legislating-for-the-united-kingdoms-withdrawal-from-the-european-union>, last access to website: 11 April 2017. The end of the ECJ supremacy was one of the core issues of Brexit supporters, see *Falter/Rüdel*, Brexit – Anwendbare Rechtsquellen und Auswirkungen auf Verträge, GWR 2016, p. 475 (476).

³⁴ Legislating for the United Kingdom's withdrawal from the European Union, Department for Exiting the European Union, p. 13, <https://www.gov.uk/government/publications/the-great-repeal-bill-white-paper/legislating-for-the-united-kingdoms-withdrawal-from-the-european-union>, last access to website: 11 April 2017.

³⁵ The dependency of the applicable conflicts-of law regime of the jurisdiction is outlined under 3.4.

3.2. The applicable consumer contract law

3.2.1. For courts in EU27 member states

With regard to contractual obligations, the applicable law is now determined by the Regulation No (EC) 593/2008 ("ROME I"). It is, however, debatable if after Brexit Member States' courts have to apply the "Rome Convention on the Law Applicable to Contractual Obligations" to determine the applicable law in cases with a UK relation. The Rome Convention is an international treaty between the member states of the EU, including the UK.³⁶ It is the preceding regime to determine the applicable law to contractual obligations. As it has not been repealed by ROME I³⁷, the question of its relationship with ROME I is raised.

- From the perspective of the ROME I the answer seems obvious: Due to its concept of universal application (Article 2 ROME I), it also applies where the conflict of laws exists with regard to a third country that is not a member of the EU. In addition, the exception requirements of Article 24 are not met. According to its Article 24, ROME I shall replace the Rome Convention in the Member States, excluding the territories of the Member States which fall within the territorial scope of that Convention and to which ROME I does not apply pursuant to Article 299 TFEU. This concerns only the overseas territories of the Member States. Moreover, Article 28 Rome Convention seems to presuppose the (continuous) membership of the parties in the European Economic Community. Hence, it is argued that the Rome Convention is either suspended by the coming into force of ROME I³⁸ or is terminated with taking effect of UK's withdrawal from the EU according to Article 50 TEU.³⁹
- There is, however, the legal opinion that the Rome Convention regains its applicability after UK's withdrawal from the EU. Being in force after Brexit, the continuous obligation of the Member States under the Rome Convention is said to hinder the Member States' courts to unilateral apply ROME I.⁴⁰

Which opinion will prevail cannot be estimated for the time being. In Member States that have revoked the stipulations implementing the Rome Convention in their national legal order (e.g. Germany⁴¹), courts are likely to continue to apply ROME I. If the withdrawal agreement will not provide clarity in this point, courts could decide inconsistently until the European Court of Justice decides this question by the way of a preliminary ruling.

The standards to determine the applicable consumer contract law are comparable but not identical. The differences shall be made clear by the following example that might occur in a large number of cases every single day:

A UK based operator of an online-shop delivers a good to a consumer situated in an EU member state. After delivery it turns out that the good is defective.

³⁶ For details, see *Cheshire/North/Fawcett*, Private International Law 14th edition (2008), p. 667.

³⁷ *Lehmann/Zetzsche*, Die Auswirkungen des Brexit auf das Zivil- und Wirtschaftsrecht, Juristenzeitung (JZ) 2017, p. 62 (65).

³⁸ In this sense *Rühl*, Die Wahl des englischen Rechts und englischer Gerichte nach dem Brexit, Juristenzeitung (JZ) 2017, p. 72 (75).

³⁹ *Hess*, IPRax 2016, p. 409 (417).

⁴⁰ *Lehmann/Zetzsche* (no. 39), JZ 2017, p. 62 (65); *Ungerer*, Brexit von Brüssel und den anderen Verordnungen zum Internationalen Zivilverfahrens- und Privatrecht in: Kramme/Baldus/Schmidt-Kessel (no. 1), p. 297 (312) favour the application of the Rome Convention. At least with regard to UK courts *Dickinson*, Journal of Private International Law 2016, p. 195 (p. 203 et seq).

⁴¹ *Rühl* (no. 40), JZ 2017, p. 72 (76).

As it is unclear if and to what extent the UK legislator will uphold EU consumer standards, the consumer would at least have the rights granted under the Consumer Sales Directive if the Member State's law in the country of his residence is applicable.

- According to **Art. 6 lit. c ROME I**, consumer contracts shall be governed by the law of the country of the consumer if the professional: (a) **pursues** his activities in the country of the consumer, or (b) **directs** such activities to that country (...).

In the example above, the online-shop operator pursues his activities in the UK. Accordingly, it is decisive if he directs his activities to Member States by operating an online-shop, which is accessible from EU member states. The European Court of Justice developed certain criteria to precise the meaning of "direct", but the details are still unclear.⁴² It is only clear that he would undoubtedly direct his activities to EU member states so that the respective EU member states law will be applicable if he expressly offered deliveries to EU member states. It is, however, unclear if it would be sufficient that the online-shop is in English language and that prices are indicated in EUR.

- According to **Article 5 (3) Rome Convention**, a consumer contract is governed by the law of the country of the consumer if in that country the conclusion of the contract was **preceded** by a specific invitation or **by advertising**, and he (the consumer) had taken in that country all the steps necessary on his part for the conclusion of the contract. The comparison with Article 6 ROME I shows that the scope is similar but not identical. It is, in particular, problematic that there are significantly fewer recent court rulings regarding the Rome Convention putting the above requirements in more concrete terms. Consequently, the application of the Rome Convention would lead to a higher degree of legal uncertainty. This applies, in particular, to the relatively new Internet related cases. For example, it is unclear if the accessibility of a website in the country of the consumer's residence is classified as "advertising" in that country.⁴³

3.2.2. For courts in the UK

The applicable conflict-of-laws regime in the UK depends not only on the outcome of the negotiations and on the question if the UK is bound by the Rome Convention, but also on how the Brexit will be administered in the UK. If ROME I is no longer applicable in the UK due to a revocation of the European Communities Act of 1972 and if the Rome Convention should bind the UK instead, UK courts will most likely determine the applicable contractual law in accordance with Contracts (Applicable Law) Act 1990, which is implementing the Rome Convention into the national legal system.⁴⁴

3.3. The applicable consumer protection law with regard to non-contractual obligations

The protection of EU27 consumers may also depend on the applicability of harmonised Member State law in the field of non-contractual obligation. If, for example, a product, which has been placed on the market by an UK producer, harms a EU consumer the question rises

⁴² For an overview, see *Ragno* in Ferrari, Rome I Regulation (2015), Art. 6 para 26 et seq.; *Dicey/Morris/Collins*, The Conflict of Laws (2012), para. 33-136 et seq.; *Wilke*, Verbraucherschutz im internationalen Zuständigkeitsrecht der EU – Status quo und Zukunftsprobleme, Europäische Zeitschrift für Wirtschaftsrecht (EuZW) 2015, p. 13.

⁴³ *Kropholler*, Internationales Privatrecht (2006), p. 483; in this context, see also *Bonomi* in Dickinson/Lein, The Brussels I Regulation Recast (2015), para. 6.38 for the parallel Article 13 of the Brussels Convention.

⁴⁴ *Dickinson*, Journal of Private International Law 2016, p. 195 (p. 202); *Rühl* (no. 40), JZ 2017, p. 72 (75).

whether the consumer has the rights granted by the Directive concerning liability for defective products (85/374/EEC).

3.3.1. For courts in the EU 27 member states

As there is no international treaty comparable to the Rome Convention in this field,⁴⁵ Member States' courts will continue to apply the Regulation No (EC) 864/2007 ("ROME II") to determine the applicable law.⁴⁶ In particular, ROME II is universally applicable, i. e. it applies also with regard to third countries.

To the product-liability-example given above, Article 5 ROME II applies stipulating that "the law applicable to a non-contractual obligation arising out of damage caused by a product shall be (a) the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country; or, failing that, (b) the law of the country in which the product was acquired, if the product was marketed in that country; or, failing that, (c) the law of the country in which the damage occurred, if the product was marketed in that country." Under one of the circumstances listed above (a-c), the EU27 consumer would enjoy protection of the respective member state law having implemented the product liability Directive (85/374/EEC) unless the person claimed to be liable could not reasonably foresee the marketing of the product in the consumer's country.⁴⁷

For other cases of non-contractual obligations (e.g. road accident), Article 4 (1) ROME II provides as a general rule that "the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur."⁴⁸

According to a recent decision of the European Court of Justice, the applicable law for injunction claims of consumer protection organisations according to the Injunctions Directive (2009/22/EC) is determined in accordance with Article 6(1) ROME II.⁴⁹ Accordingly, a Member State's legal order implementing the Directive is applicable, if in that country collective interests of consumers are, or are likely to be, affected. If, however, the injunction claim concerns the use of unfair terms, the applicable law to the assessment of that particular contractual term is determined pursuant to ROME I, regardless if that assessment is made in an individual action or in a collective action.⁵⁰

3.3.2. For courts in the UK

According to which legal basis UK courts decide on the applicable law for non-contractual obligations depends again on how Brexit is administered in the UK. The UK legislator could decide to adopt ROME II unilaterally. If, by contrast, ROME II would not be declared

⁴⁵ The Hague Convention of 2 October 1973 on the Law Applicable to Products Liability has not been signed by the UK, see <https://www.hcch.net/en/instruments/conventions/status-table/?cid=84>, last access to website: 20 March 2017; see also *Cheshire/North/Fawcett*, Private International Law 14th edition, p. 857.

⁴⁶ *Rühl* (no. 40), JZ 2017, p. 72 (75); *Ungerer* in Kramme/Baldus/Schmidt-Kessel (no. 1), p. 297 (313).

⁴⁷ For details, see *Müller* in Beckscher online-Großkommentar (edition of 1 December 2016), Article 5 Rome II, no. 106 et seq; *Plender/Wilderspin*, The European Private International Law of Obligations, 3rd edition (2009), para. 19-001 et seq.

⁴⁸ *Plender/Wilderspin*, The European Private International Law of Obligations, 3rd edition (2009), para. 18-001 et seq.

⁴⁹ ECJ, Decision of 28 July 2016, C-191/15.

⁵⁰ ECJ, Decision of 28 July 2016, C-191/15.

applicable, UK Part III of the Private International Law (Miscellaneous Provisions) Act 1995 would be applicable.⁵¹

3.4. Jurisdiction and Enforceability of contractual and non-contractual obligations

For two reasons post-Brexit consumer protection is also a question of jurisdiction. First, from a consumer's perspective court proceedings before the courts of his/her country of residence are more facile. Second, as shown above, the conflict-of-laws regime and, consequently, the law applicable according to that regime may differ between courts of EU Member States and the UK. Hence, the jurisdiction has at least an indirect effect on the protection of EU consumers with regard to third countries.

Before Brexit, all Member States, including the UK, apply the Brussels I bis Regulation providing for rules on jurisdiction and cross-border enforcement.⁵² After Brexit, the situation is more complex:

- In the EU Member States the Brussels I bis Regulation remains in force while in the UK the Brussels I bis Regulation would (most likely) cease to apply.⁵³
- However, in cross-border disputes with regard to Britain, the relationship to the Brussels Convention is unclear.⁵⁴ The Brussels Convention is an international treaty between 14 Member States, including the UK.⁵⁵ Some scholars are of the opinion that the Brussels Convention takes precedence over the Brussels I bis Regulation for those "old" Member States that are contracting parties of the Convention. At the contrary, the 13 "newer" Member States that are not contracting parties could still apply Brussels I bis Regulation.⁵⁶
- Others, however, argue that the Brussels Convention requires a membership of the contracting parties in the European (Economic) Union so that it does not take precedence over the Brussels I bis Regulation with regard to the UK.⁵⁷ However, the applicability of the Brussels I bis Regulation would in any case be limited to its third-country-provisions.⁵⁸

From the perspective of consumer protection, the application of the Brussels I bis Regulation can be favourable in certain cases: In its Articles 17-19, it provides for a jurisdiction for consumer contract disputes. According to Article 18 (1), an EU consumer has the choice to bring proceedings against the other party to a contract either in the courts of the Member

⁵¹ *Dickinson*, Journal of Private International Law 2016, p. 195 (p. 198 et seq.); *Rühl* (no. 40), JZ 2017, p. 72 (75).

⁵² For the peculiarities with regard to Denmark, see *Dickinson* in Dickinson/Lein, The Brussels I Regulation Recast (2015), para. 1.83.

⁵³ For details on the legal situation in the UK regarding international private law, see *Dickinson*, Journal of Private International Law 2016, p. 195 (p. 197 et seq.).

⁵⁴ Further, the application of the Lugano Convention 2007 without a UK's participation in the EEA is discussed. However, this would require either an EFTA membership of the UK or the consent of all contracting parties, including the EU. For details see *Hess*, IPRax 2016, p. 409 (p. 414).

⁵⁵ For further details, see *Dickinson* in Dickinson/Lein, The Brussels I Regulation Recast (2015), para. 1.08 et seq.

⁵⁶ *Lehmann/Zetzsche* (no. 39), Juristenzeitung (JZ) 2017, p. 62 (70); *Ungerer*, Brexit von Brüssel und den anderen Verordnungen zum Internationalen Zivilverfahrens- und Privatrecht in: Kramme/Baldus/Schmidt-Kessel (no. 1), p. 297 (300).

⁵⁷ *Rühl* (no. 40), JZ 2017, p. 72 (77); see also *Hess*, IPRax 2016, p. 409 (p. 413) stating that a reactivation of Brussels Convention is excluded.

⁵⁸ See *Hess*, IPRax 2016, p. 409 (p. 411) who is also stating that certain agreements on the recognition of judgements between the UK and six Member States would be reactivated (p. 413).

A further scenario is a participation of the UK in the Lugano Convention of 2007 (without a participation in the EEA). For details on that scenario, see *Hess*, IPRax 2016, p. 409 (p. 414 et seq.).

State in which that party is domiciled or, regardless of the domicile of the other party, in the courts where he or she is domiciled. On the other hand, proceedings against a consumer by the other party to the contract may only be brought in the courts of the Member State in which the consumer is domiciled. The requirements for this “consumer jurisdiction” are comparable to those in Article 6 ROME I concerning the applicable law: It applies in matters relating to a consumer contract “if (a) it is a contract for the sale of goods on instalment credit terms; (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or (c) in all other cases, the contract has been concluded with a person who **pursues** commercial or professional activities in the Member State of the consumer’s domicile or, by any means, **directs** such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities”.⁵⁹ On the contrary, the Brussels Convention’s consumer jurisdiction (Article 13) is more narrowly defined requiring “a contract for the supply of goods or a contract for the supply of services”, and that “(a) in the State of the consumer’s domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising” and that “(b) the consumer took in that State the steps necessary for the conclusion of the contract.”⁶⁰

Moreover, (so far only with regard to Member States) the Brussels I bis Regulation provides for the more creditor friendly enforcement regime, as it allows the enforcement without a declaration of enforceability of the judgment, while the Brussels Convention 1968 requires this so called exequatur procedure.

In the light of this legal uncertainty, the withdrawal and/or future relationship agreement should clarify the question of the applicable jurisdiction and conflict-of-laws regime. As a role model for such an agreement, the agreement between the EU and Denmark, which was exempt from the Judicial Cooperation in Civil Law Matters according to Protocol No. 5 of the Amsterdam Treaty⁶¹ has concluded an agreement with the EU regarding the application of the Brussels I Regulation and further amendments which came into force in 2007.⁶²

3.5. The applicability of EU consumer protection legislation in the field of regulatory law

Consumer protection in the EU is not only based on individual redress of consumers but is also ensured by sector specific regulation. Regulatory frameworks in the field of product safety or in the financial market are examples for such instruments of consumer protection. Concerns in this field can, *inter alia*, occur if UK based market participants are not **bound** by such legislation or if the standards of such legislation could not be **enforced** properly. The analysis in this broad area cannot assess possible consumer protection issues in detail but must confine itself to some general remarks:

- The applicability of EU legislation in cases relating to third countries depends on the nature of the respective rights and obligations. In case they are part of substantive private law, they are governed by the applicable rules of Private International Law

⁵⁹ For details, see *Bonomi* in Dickinson/Lein, The Brussels I Regulation Recast (2015), para. 6.36 et seq.

⁶⁰ *Bonomi* in Dickinson/Lein, The Brussels I Regulation Recast (2015), para. 6.38 points out that difficulties appear to geographically localize the contractual actions of the involved persons in e-commerce; see also *van Calster*, European Private International Law, 2nd edition (2016), p. 94

⁶¹ *Hess* in Grabitz/Hilf/Nettesheim, Das Recht der Europäischen Union, 60. Ergänzungslieferung 2016, Art. 81 AEUV, para. 59-61.

⁶² Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Official Journal L 299 , 16/11/2005, p. 62-67; see also *Staudinger* in Rauscher (ed.), Einl. Brüssel Ia-VO, para. 15; *Lehmann/Zetzsche* (no. 39), Juristenzeitung (JZ) 2017, p. 62 (p. 71).

characterised by multilateral conflict-of-laws rules as provided by, e.g., Rome I and Rome II Regulation. This is particularly the case where private law rights are granted to individuals. One example in this context are claims granted under the Product Liability Directive. In this case, Article 5 ROME II determines the applicable law. If the relevant connecting factor refers to the law of a Member State, the respective rule of this Member State implementing the claim under the Product Liability Directive into national law is applied. On the other hand, in the field of public law, i.e. where the execution and/or enforcement of the legislation is delegated to Member States' supervisory authorities, a conflict-of-laws regime comparable to the EU Regulations in the field of Private International Law does not exist. Instead, the principle of unilateralism in Public International Law rules applies. Hence, cross-border applicability of such regulatory law is determined by the respective legal acts themselves. In the absence of an express provision, the applicability in cases relating to third countries can be derived, in particular, from provisions regarding the scope of the EU legislation in question or the local competences of supervisory authorities.⁶³ The domicile of the professional within the EU, the acting on the European Market or the impact on the European Market often serve as the relevant connecting factor.

- Irrespective of their qualification in the above explained sense, protection gaps, which are already triggered by a limited international scope of EU legislation occur notably when EU27 consumers are **travelling to the UK**. In the following, four examples are given:⁶⁴
 - The **Air Passenger Rights Regulation** No (EC) 261/2004 granting compensation in the events of denied boarding, cancellation and delay is not applicable to passengers of non-EU carriers departing from an airport in a third country, even if the destination of the flight is in the EU (see Article 3 (1)). However, the Montreal Convention may provide passenger rights in such cases.
 - From 15 June 2017 users of mobile phones shall not be burdened with **roaming charges** when travelling within the EU. As the UK would not be bound to such Regulation (No 531/2012/EU amended by Regulation No 2120/2015) after Brexit, EU27 consumers could face certain roaming charges when travelling to the UK.
 - On 7 February 2017 the Council and the Parliament agreed on a proposal for a Regulation ensuring the cross-border portability of online content services in the internal market. The Regulation shall eliminate obstacles to cross-border portability of online content services due to intellectual property issues (**geoblocking**). The proposal targets to grant "equal access from abroad to content legally acquired or subscribed to in the country of residence when temporarily present in another Member State such as for holidays, business trips or limited student stays".⁶⁵ Given this, EU27 consumers could face geoblocking issues when travelling to the UK after Brexit.

⁶³ See *Poelzig/Bärnreuther*, Die finanzmarktrechtlichen Konsequenzen des "Brexit", in: Kramme/Baldus/Schmidt-Kessel, p. 153 (p. 162; p. 167; p. 169) stating that the decisive factor determining the scope of EU secondary law in the regulatory field can be the domicile of the professionals within the EU, the acting on the market place in the EU or the impact of actions on the regulated EU market.

⁶⁴ Further potential consumer protection issues are listed by BEUC, Brexit: Securing a Positive Outcome for Consumers, http://www.beuc.eu/publications/beuc-x-2017-017_mgo_brexit.pdf, last access to website: 16 March 2017.

⁶⁵ See <http://www.consilium.europa.eu/en/press/press-releases/2017/02/07-portability-digital-content-services/>, last access to website: 21 March 2017.

- The European **Health Insurance Card** could not be accepted in the UK.⁶⁶
- On the contrary, it can be said that the Brexit will have a rather low impact on the applicability of regulatory legislation that has a **market-related scope** (scope depending on the acting on the internal market or on the impact on the market irrespective if the seat is in a member state or a third country). For example, the General Product Safety Directive (2001/95/EC) aims at ensuring that only safe products are placed on the market, regardless if the product is produced in the EU or outside the EU.
- Problems may occur regarding the enforcement of infringements if the actor has its residence in a third country. In the case of the **General Product Safety Directive**,⁶⁷ this problem is already addressed properly: as it might be difficult to enforce third country *producers'* compliance with the Directive, the *importer* of such products can be held equally liable for the placement of unsafe products. However, under the Product Liability Directive (85/374/EEC) the importer of a product can avoid his liability by identifying the producer.⁶⁸
- Where such solutions on the level of substantial law are not possible, compliance with EU legislation is a question of the **enforcement** regime itself. The legal means of supervisory authorities in Member States to enforce compliance with EU legislation of professionals seated in third countries are limited. In fields where enforcement is not organised under private law, but is in the competence of public authorities, it should be considered to close cooperation agreements ensuring administrative cooperation of UK authorities. The Regulation No (EC) 2006/2004 enhancing the cooperation between Member States in the field of consumer protection could act as role model for equivalent stipulations in the withdrawal agreement. In the field of financial services, there are already provisions in place facing the problem of compliance of market players from third countries. For example, Article 38 of the Regulation No (EU) 236/2012 on short selling and certain aspects of credit default swaps and Article 26 of the Regulation No (EU) 596/2014 on market abuse allows authorities of member states to close **cooperation agreements** with supervisory authorities of third countries. From the perspective of consumer protection, it would, however, be favourable to establish such forms of cooperation in a mandatory manner in the withdrawal agreement and not only as an option.
- As an instrument of consumer protection, market actors in specific sectors, i. e. financial intermediaries such as credit institutes and insurances, are subject to licensing requirements. Deviating from the principle of territoriality, licensing requirements in such sectors follow the country-of-origin principle: , according to which the admission in one member state allows operating business activities also in

⁶⁶ Vice versa, UK citizens may not be able to access care via the European Health insurance Card in Member States, see *Jean McHale*, Written Evidence (BRE0098) of 14 March 2017, Health Committee, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/inquiries/parliament-2015/brexit-and-health-and-social-care-16-17/publications/>, last access to website: 20 March 2017.

⁶⁷ For details about the Directive, see *Weatherill*, EU Consumer Law and Policy (2005), p. 199 et seq.

⁶⁸ *Weatherill*, EU Consumer Law and Policy (2005), p. 138.

other Member States ("**European Passport**").⁶⁹ After Brexit, the UK would be treated as a third country.⁷⁰ To pursue business activities, which are subject to such license requirements, third country firms need to establish a branch in a Member State in a first step and acquire a license in a second step.⁷¹ If UK firms in the respective sectors would establish branches in Member States in the described manner, the consumer protection level would still be ensured. However, the continuous validity of passports after Brexit granted by UK authorities before the Brexit needs to be clarified. It can be expected that the UK, in order to protect the city of London as Europe's financial centre, aims to reach an agreement to further participate in the regime of European Passports.⁷² If such a close integration of a non-member state is appropriate, is predominantly a political decision. From the perspective of consumer protection and as far as the said licensing requirements serve the consumer protection, a continuous validity of European Passports raises concerns, if in return the UK is not bound to regulatory standards that are equivalent to the EU standards.

⁶⁹ See Article 14 and 15 Directive (2009/138/EC) on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Article 5 and 6 Directive (2014/65/EU) on markets in financial instruments (MiFID II), Article 8, 33 and 34 Directive (2013/36/EU) on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

⁷⁰ *Poelzig/Bärnreuther* (no. 65) in: Kramme/Baldus/Schmidt-Kessel, p. 153 (p. 164). See also *Forrest*, Brexit: key Issues for Business, *Bedrijfsjuridische berichten* (Bb) 2016, p. 276 et seq.

⁷¹ If such a license, which is granted in one Member State allows participating in the European Passport mechanism depends on very act in question. For details, see *Poelzig/Bärnreuther* (no. 65) in: Kramme/Baldus/Schmidt-Kessel, p. 153 (p. 164).

⁷² See *Edmonds*, Brexit & financial services, House of Commons Briefing Paper, Number 07628, 9 March 2017 p. 14, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7628#fullreport>, last access to website: 20 March 2017.

4. TAILOR-MADE AGREEMENT

KEY FINDINGS

- Free-trade agreements as such do not undermine the consumer protection level. If consumer issues arise depends on the content of such agreements. In particular, mutual recognition rules should only be concluded, if the equivalence of standards is ensured. Further, investment protection rules bear a potential consumer protection risk if their scope is so broad that they hinder to enact, apply and enforce reasonable consumer protection regulation.
- The situations of Switzerland and of post-Brexit UK are to a certain extent comparable, as both European countries do not aim to become EU or EEA members, but have a vivid interest to enjoy an access to the European single market. However, as Switzerland enjoys a wider discretion than other EFTA Members as to whether EU consumer protection legislation shall be adopted or not, the harmonisation of standards cannot be achieved in all areas of consumer protection.

4.1. Consumer Protection Issues in Free Trade Agreements

The EU has closed several association agreements with third countries either in the EU or outside the EU. Such agreements establish customs unions or a closer cooperation in the form of free-trade agreements (e. g. CETA). Such forms of association have in common that, in general, the associated partners are not obliged to adopt EU legislation. Consequently, the consumer protection level provided by the legal orders of the associated countries may fall short in comparison to the EU consumer protection level. Where this is the case, the protection of EU consumers depends on the applicability of Member States legal orders having implemented the EU standards as described under point 3 for the WTO model.

However, modern free-trade agreements try not only to achieve economic gains by abolishing tariffs but are also aiming at reducing non-tariff trade barriers by means of regulatory cooperation. Instruments of regulatory cooperation are for example information exchange, mutual recognition of certain legally required standards and legal harmonisation. In the course of negotiating TTIP and CETA, critics argued that, in particular, such instruments of regulatory cooperation have the potential to undermine the high EU consumer protection level.⁷³ Challenges to find a suitable solution for both sides may, in particular, occur, if the regulatory approaches of the contracting parties differ. For example, the field of consumer and environmental protection in the EU is governed by the precautionary principle (see Article 191 (2) TFEU), while the US regulation follows a science based risk assessment prior to regulation.⁷⁴

The question, if a potential free-trade-agreement with the UK will raise concerns with regard to consumer protection, cannot be assessed at this stadium. Concerns regarding the EU consumer protection do not depend on the closing of an agreement as such but on its content. *Inter alia*, consumer protection should be taken into special consideration when negotiating the following topics:

⁷³ See for example, the statement of BEUC, http://www.beuc.eu/publications/beuc-x-2016-045_lau_ceta_position_paper.pdf; accessed on 15 March 2017..

⁷⁴ Woolcock, TTIP: Challenges and Opportunities for Consumer Protection, in-depth analysis for the IMCO Committee (2015), IP/A/IMCO/2014-12.

- **Information exchange** should require a comparable data protection level.
- Where forms of **mutual recognition** are agreed on, it should be ensured that the recognised standards are equivalent. Otherwise there is a risk that the more ambitious standards are undermined.
- Further, it should be ensured that **investment protection rules** do not hinder to enact, apply and enforce reasonable consumer protection regulation.⁷⁵ To avert this risk it could be considered not to grant investors the right to claim damages for possible violations of investment protection rules due to consumer protection measures. Otherwise, liability risks could be a factor for consideration in the legislative procedure impeding effective consumer protection regulation.

4.2. Switzerland as a Role Model?

The situation of Switzerland⁷⁶ is in several ways comparable with the situation of the UK: Switzerland is a European country that neither does have a membership in the EU nor currently aims to become a member. As Switzerland has signed but (following a referendum on 6 December 1992) has not ratified the EEA Agreement, it does not apply to Switzerland. Instead the “Swiss-Modell” is based on various sector-specific agreements between the EU and Switzerland. The agreements have been negotiated mainly in two packages, often referred to as “Bilateral I” (1999) and “Bilateral II” (2004). “Bilateral I” encompasses agreements on scientific and technological cooperation, procurement, mutual recognition in relation to conformity assessment, trade in agricultural products, air transport, carriage of goods and passengers by rail and road as well as free movement of persons. “Bilateral II” encompasses agreements on processed agricultural products, environment, statistics, fight against fraud, double taxation of retired EU civil servant pensions, taxation on savings extension of “Schengen” and “Dublin” to Switzerland, research and media.⁷⁷

The agreements mainly intend to liberalise trade and “provide privileged access to Swiss economic operators to the EU internal market.”⁷⁸ In addition to free-trade agreements, the goal shall also be accomplished by adoption of the relevant EU *acquis* in the Swiss legal order. Such adoption mechanism can be regarded as the main difference of the Swiss model in comparison to the above explained free-trade-agreements. However, the mechanism to adopt changes of EU law is not as dynamic as it is under the EEA Agreement. *Epiney*⁷⁹ classifies three different mechanisms of adoption to new legislation: According to some agreements the adoption of new EU legislation may require a unanimous resolution of the

⁷⁵ The Commission was already aware of this problem when negotiating CETA, see European Commission, Investment provisions in the EU-Canada free trade agreement (CETA), February 2016, see http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151918.pdf, last access to website: 20 March 2017. See also *Webb*, CETA: the EU-Canada free-trade agreement, Briefing Paper Number 7492, 3 February 2017, House of Commons Library, link to full report: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7492#fullreportlast> access to website: 20 March 2017.

⁷⁶ For details about the Swiss-Model, see *Dhingra/Sampson*, Life after BREXIT: What are the UK's options outside the European Union), in: *Brexit 2016: Policy analysis from the Centre of Economic Performance* (2016), p. 4; *Epiney*, Die Beziehungen Schweiz-EU als Modell für die Gestaltung des Verhältnisses Großbritanniens zur EU, in: *Kramme/Baldus/Schmidt-Kessel*; see also *Petrov*, Exporting the *Acquis Communautaire* through European Union External Agreements (2011), p. 105 et seq.p. 77-98; *Kaddous*, Die Zusammenarbeit zwischen der EU und der Schweiz, in: *Hatje/Müller-Graff* (Hrsg.), *Enzyklopädie Europarecht*, Band 1, § 20.

⁷⁷ See *Petrov* (no. 78), p. 105 et seq.

⁷⁸ See *Petrov* (no. 78), p. 108 et seq.

⁷⁹ *Epiney* (no. 78) in: *Kramme/Baldus/Schmidt-Kessel*, p. 77 (p. 85 et seq.)

Joint Committee which is installed under the most agreements.⁸⁰ Under other agreements, Switzerland is obliged to adopt new legislation in any case. If this obligation is breached, some agreements can be terminated, while others allow to the EU to set forth compensation measures.

However, the binding to EU legislation is less intense with regard to interpretation. It is unclear to what extent the agreements have to be interpreted in line with the interpretation of the corresponding EU legislation.⁸¹ Swiss courts are further not obliged to bring cases before in the European Court of Justice by means of the preliminary ruling procedure.⁸²

It has to be noted that the consumer protection *acquis* is not entirely covered by the agreements. This is particularly the case for consumer contract law. However, within the framework of the “Swisslex” programme, which has been set up by Switzerland after the vote of the Swiss people against the participation in the EEA, certain EU Directives served as role models for corresponding amendments of the Swiss legal order. This includes the Doorstep Selling Directive (85/577/ECC), the Consumer Credit Directive (87/102/EEG) and the Package Travel Directive.⁸³ However, in other fields of consumer contract law, the respective EU legislation has not been adopted. *Inter alia*, the Swiss legislator has not adopted the EU rules regarding consumer good purchase, information duties, the revocation right in distance contracts and time-sharing.⁸⁴ But even in fields where the legislator has decided to autonomously adopt EU consumer protection legislation, a complete harmonisation can hardly be achieved because the respective provisions of Swiss law have not always been amended to later changes of the respective EU legislation. This does not only let the consumer protection levels drift apart but also leads to legal uncertainty with regard to interpretation of such acts: It can be uncertain if the Swiss provisions shall be interpreted in line with their original European “role models” or in line with the current EU legislation.⁸⁵

To summarize, as Switzerland enjoys a wider discretion than other EFTA Members as to whether EU consumer protection legislation shall be adopted or not, the harmonisation of standards cannot be achieved in all areas of consumer protection.

⁸⁰ See *Petrov* (no. 78), p. 110 with reference to Article 6 EC-Swiss Agreement on Air Transport and Article 14 EC-Swiss Agreement on Free Movement of Persons.

⁸¹ *Epiney* (no. 78) in: Kramme/Baldus/Schmidt-Kessel, p. 77 (p. 87 et seq.); however, according to some agreements ECJ rules shall be taken into consideration by Switzerland; see also *Petrov* (no. 78), p. 112.

⁸² *Epiney* (no. 78) in: Kramme/Baldus/Schmidt-Kessel, p. 77 (p. 88 et seq.).

⁸³ See *Giampaolo/Huguenin*, Entwicklungen im schweizerischen Konsumrecht – Plädoyer für ein integrales Konsumschutzgesetz, in: Jusletter of 8 July 2013, p. 2.

⁸⁴ *Huguenin/Meise*, Vertragsrecht, in: Kellerhals/ Baumgartner (Hrsg.), Wirtschaftsrecht Schweiz – EU, Überblick und Kommentar 2016/17 (erscheint im April); *Marchand*, Droit de la consommation (2012), p. 46 et seq.

⁸⁵ For details regarding the relationship of Swiss and EU consumer contract law, see *Giampaolo/Huguenin*, Entwicklungen im schweizerischen Konsumrecht – Plädoyer für ein integrales Konsumschutzgesetz, in: Jusletter of 8 July 2013. For the interpretation of Swiss law in line with their European “role models”, see Federal court, decision of 25 march 2003, BGE 129 III 335 (350).

5. TRANSITORY PROVISIONS AND FURTHER TOPICS OF EU-UK AGREEMENTS

KEY FINDINGS

- The EU plans to finalise two agreements, the withdrawal agreement to be concluded before the withdrawal takes effect and the future relationship agreement to be concluded once the United Kingdom is no longer a Member State.
- Legal uncertainties in the transition period can be avoided if the withdrawal agreement provides for a time-limited prolongation of EU consumer protection *acquis* meeting the requirements of the Draft negotiation guidelines (“existing Union regulatory, budgetary, supervisory and enforcement instruments and structures to apply”) until the future relationship agreement comes into force.
- The future relationship agreement should contain transitory stipulations providing for an orderly transition from the *pre* withdrawal to the *post* withdrawal legal regime.
- Finding suitable transitory provisions requires a review of the specific legislations in question analysing if provisions cushioning the immediate impact of the transition from the legal situation before the withdrawal to the situation after the withdrawal are necessary. This requires an analysis of the currently unknown settlements of the future relationship agreement. Such an analysis should also take into account the protection of legitimate expectation of consumers and professionals as well as the legal clarity in the transitory period.
- A need for transitory provisions can occur, in particular, in the field of consumer contract law and with regard to the applicable conflicts-of-law regime.
- Moreover, the competences of the European Court of Justice for cases falling in the transition period need to be clarified. The European Court of Justice should remain competent for “UK-cases” pending at the time of withdrawal as well as for cases that are not pending at the time of withdrawal, but that are still governed by EU law.
- Further, the future relationship agreement should address the legal uncertainty occurring with regard to jurisdiction, conflict-of-laws and enforcement of judgments, possible protection gaps for EU27 consumers traveling to the UK and cooperation of authorities in the field of sector-specific regulation.
- If the future relationship agreement follows the concept of an “ambitious free trade agreement”, it should be ensured that the high consumer protection level will not be undermined. For example, mutual recognition rules should only be concluded, if the equivalence of recognised standards is ensured. Further, investment protection rules must be drafted in a way that they do not hinder to enact, apply and enforce reasonable consumer protection regulation.

5.1. Transitory Provisions

5.1.1. Interaction between negotiation schedule and possible transitory provisions

The “Draft guidelines following the United Kingdom’s notification under Article 50 TEU” of the General Secretariat of the European Council state that the negotiations between the EU and the UK should be separated in two phases. The negotiations in the first phase shall lead

to an agreement on arrangements for an orderly withdrawal.⁸⁶ The second phase of negotiations dealing with the future relationship between the EU and the UK shall begin “as soon as sufficient progress has been made in the first phase towards reaching a satisfactory agreement on the arrangements for an orderly withdrawal”. A possible agreement shall be concluded not before the United Kingdom is no longer a Member State of the EU.⁸⁷ Accordingly, the EU plans to finalise two agreements, the withdrawal agreement to be concluded before the withdrawal takes effect and the future relationship agreement “to be finalised and concluded once the United Kingdom is no longer a Member State”.⁸⁸

Hence, the shaping of future relations according to the models introduced above (EEA Model or Tailor-made Agreement) is reserved to the future relationship agreement. On the contrary, the withdrawal agreement is only aiming to “settle the disentanglement of the United Kingdom from the Union and from all the rights and obligations the United Kingdom derives from commitments undertaken as Member State” and “provide as much clarity and legal certainty as possible to citizens, businesses, stakeholders and international partners on the immediate effects of the United Kingdom’s withdrawal from the Union.”⁸⁹

The challenge in this regard is to find suitable solutions that secure an orderly transition from the current status (membership of the UK) to the legal situation as agreed on in the future relationship agreement, that is currently unknown and probably will still be unknown at the time of negotiations of the withdrawal agreement. A further difficulty occurs, if the future relationship agreement comes into force after 29 March 2019, which is the date when the withdrawal will take effect according to the mechanism of Article 50 TEU. In this scenario, two transitory periods would have to be managed, the transition from a full membership of the UK to a third country status (WTO Model) and the transition from the third country status to the status concluded in the future relationship agreement. This bears a high risk of legal uncertainty for consumers, both in the EU27 and in the UK. Such risk will be minimised if the withdrawal agreement provides for a time-limited prolongation of EU consumer protection *acquis* meeting the requirements of the Draft negotiation guidelines (“existing Union regulatory, budgetary, supervisory and enforcement instruments and structures to apply”).⁹⁰

Even if such a prolongation is reached, further transitory provisions could be foreseen as a fallback option for the case that no future relationship agreement is reached. On the contrary, if a future relationship agreement is reached, such agreement should contain (modified) transitory stipulations providing for an orderly transition from the *pre* withdrawal to the *post* withdrawal legal regime. As long as it is unknown if and which parts of the consumer protection *acquis* shall be part of the future relationship agreement, a definite recommendation for transitory provisions cannot be made.

5.1.2. Guidelines for transitory provisions

For the time being, only some general remarks can be made:

⁸⁶ Draft guidelines following the United Kingdoms’s notification under Article 50 TEU” of the General Secretariat of the European Council of 31 March 2017, XT 21001/17, p. 4 et seq.

⁸⁷ Draft guidelines following the United Kingdoms’s notification under Article 50 TEU” of the General Secretariat of the European Council of 31 March 2017, XT 21001/17, p. 8.

⁸⁸ Draft guidelines following the United Kingdoms’s notification under Article 50 TEU” of the General Secretariat of the European Council of 31 March 2017, XT 21001/17, p. 8.

⁸⁹ Draft guidelines following the United Kingdoms’s notification under Article 50 TEU” of the General Secretariat of the European Council of 31 March 2017, XT 21001/17, p. 4.

⁹⁰ Draft guidelines following the United Kingdoms’s notification under Article 50 TEU” of the General Secretariat of the European Council of 31 March 2017, XT 21001/17, p. 4.

If no transitory provisions are agreed on in the agreements, the consequences as outlined for the different models above take effect from the day the UK loses its membership status.

- Currently, it is discussed if a fund should be set up to compensate customers suffering from a loss of rights following the withdrawal. It appears possible to agree on such a fund in the withdrawal agreement in order to cushion the loss of rights due to the possible lack of suitable transitory provisions, notably if a future relationship agreement is not reached. However, concluding transitory provisions avoiding a sudden and unpredictable loss of rights should be given priority. In fields where such provisions are successfully agreed on, there is not *per se* a need for compensation.
- Finding suitable transitory provisions requires a review of the specific legislations in question analysing if provisions cushioning the immediate impact of the transition from the legal situation before the withdrawal to the situation after the withdrawal are necessary. This requires an analysis of the currently unknown settlements of the future relationship agreement. Such an analysis should also take into account the protection of legitimate expectation of consumers and professionals as well as the legal clarity in the transitory period.
- It has to be outlined that, from the perspective of the UK legal order, the protection of legal expectations is also a question of UK (constitutional) law that might incite the UK legislator to enact transitory measures irrespective of an agreement on such measures with the EU, unless such measures do not require the EU's consent.

Against the background of the above described uncertainty regarding the content of future relationship agreement, some fields where the need for transitory provisions may occur are highlighted in the following:

- In consumer contract law it might occur that a contract governed by UK law is closed before the withdrawal, while a dispute regarding this contract has to be settled after the withdrawal. In this case, it has to be clarified if the relevant UK legal provisions have to be interpreted in line with the relevant EU Directives (e. g. Consumer Sales Directive). If this is not the case, the affected consumer could have a disadvantage compared to his situation before the withdrawal. This leads to the question how transitory provisions could be drafted that are suitable for such cases. The EU Directives partly contain transitory provisions regarding their coming into force. Such provisions could serve as role models for possible transitory provisions. For example, according to Article 28 (2) Consumer Rights Directive (2011/83/EU), the Directive shall only be applicable to contracts that are closed after the date of its application (13 June 2014). Such a mechanism can, at least from a perspective of German intertemporal law of obligations, be described as the general rule.⁹¹ However, transitory provisions often exempt ongoing long-term contracts from this general rule with the consequence that "old" long-term contracts are governed by the "new" legal situation.⁹² In order to ensure legal certainty and to protect legitimate interests it is recommended to consider agreeing on such transitory provisions in the negotiations for the field of consumer contract law.

⁹¹ See *Schmidt-Kessel/Kramme* in Prütting/Wegen/Weinreich, BGB commentary, 11th edition (2016), Vor § 242, no. 16.

⁹² See *Schmidt-Kessel/Kramme* in Prütting/Wegen/Weinreich, BGB commentary, 11th edition (2016), Vor § 242, no. 22.

- In international civil procedure law is it unclear if a jurisdiction conferred by the Brussels I bis Regulation remains unaffected in case of its abrogation in the UK.⁹³ Comparable issues have to be faced with regard to the intertemporal applicable conflict of laws regime.⁹⁴
- The Draft negotiation guidelines state that the European Court of Justice should remain competent to adjudicate in procedures “pending before the Court of Justice of the European Union upon the date of withdrawal that involve the United Kingdom or natural or legal persons in the United Kingdom”.⁹⁵ From the perspective of consumer protection, this position is strongly supported. Moreover, it seems reasonable if the European Court of Justice remains competent also for all “old” cases governed by pre-withdrawal EU law, regardless when they become pending.
- Also in the field consumer protecting regulatory law, it should be assessed to agree on transitory provisions. For example, it should be clarified when the cooperation between authorities responsible for the enforcement of consumer protection laws according the Regulation No (EC) 2006/2004 shall end (if it is not agreed to be continued). In particular, the question arises how to deal with pending cases.

5.2. Possible topics for the future relationship agreement

The content of the future relationship agreement is predominantly a political question to which extent the UK shall participate in the EU consumer protection *aquis*. As shown above under No. 3 (WTO Model), legal uncertainty occurs with regard to jurisdiction, conflict-of-laws and enforcement of judgments in cases with consumers’ involvement. In the light of this legal uncertainty, the future relationship agreement should clarify the question of the applicable jurisdiction and conflict-of-laws regime. One option to ensure such clarity is to declare the Brussels I bis Regulation and the ROME I and II Regulations applicable for courts in the EU and the UK for all cross-border disputes concerning a Member State and the UK (see above 3.4).

With due regard to the indivisibility of the Single Market, it should be considered to close protection gaps, which might occur in the future due to a limited international scope of EU legislation. In particular, protection gaps could occur when EU27 consumers are travelling to the UK. For example, as stated above under No. 3,

- the Air Passenger Rights No (EC) 261/2004 granting compensation in the events of denied boarding, cancellation and delay is not applicable to passengers of non-EU carriers departing from an airport in a third country, even if the destination of the flight is in the EU (see Article 3 (1));
- the EU-wide ban of roaming charges and of geoblocking would not be applicable in the UK;

⁹³ For details, see *Dickinson*, Journal of Private International Law, p. 195 (207 et. Seq.); *Hess*, IPRax 2016, p. 409 (p. 411 et seq.).

⁹⁴ For details see *Dickinson*, Journal of Private International Law, p. 195 (207 et. seq.); *Hess*, IPRax 2016, p. 409 (p. 417 et seq.).

⁹⁵ Draft guidelines following the United Kingdom’s notification under Article 50 TEU of the General Secretariat of the European Council of 31 March 2017, XT 21001/17, p. 7.

- the European Health Insurance Card could not be accepted in the UK.⁹⁶

In the field of (sector-specific) regulatory law, companies from third countries are bound in the same manner by the legal framework than EU based companies. However, compliance with EU legislation is a question of the enforcement regime itself. The legal means of supervisory authorities in Member States to enforce compliance with EU legislation of professionals seated in third countries are limited. Hence, it should be considered to close cooperation agreements ensuring administrative cooperation of UK authorities (for details, see above No 3).

If the future relationships with the UK “shall be governed by an “ambitious free-trade agreement” such agreement should provide for consumer protection mechanisms. In particular, mutual recognition rules should only be concluded, if the equivalence of recognised standards is ensured. Further, investment protection rules bear a potential consumer protection risk if their scope is so broad that they hinder to enact, apply and enforce reasonable consumer protection regulation.

⁹⁶ Vice versa, UK citizens may not be able to access care via the European Health insurance Card in Member States, see *Jean McHale*, Written Evidence (BRE0098) of 14 March 2017, Health Committee, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/inquiries/parliament-2015/brexit-and-health-and-social-care-16-17/publications/>, last access to website: 20 March 2017.

ANNEX

Table of the EEA consumer protection *acquis*⁹⁷

Consumer contract law:

- Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights (OJ L 304, 22.11.2011, p. 64).
- Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ No L 95, 21.4.1993, p.29).⁹⁸
- Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).⁹⁹

Consumer protection legislation with regard to commercial practices:

- Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (OJ L 149, 11.6.2005, p. 22).
- Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version) (OJ L 376, 27.12.2006, p. 21).
- Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27).

Product safety:

- Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ No L 210, 7.8.1985, p. 29).¹⁰⁰
- Council Directive 87/357/EEC of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers (OJ No L 192, 11.7.1987, p. 49).¹⁰¹
- Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety OJ L 11, 15.1.2002, p. 4–17.

⁹⁷ The scope of the consumer protection *acquis* that has been checked for EEA adoption as listed in the table follows the consumer protection *acquis* as outlined in the study “EU Mapping: Overview of IMCO Related Legislation”. The table does not claim to be exhaustive.

⁹⁸ As amended by: Directive 2011/83/EU of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

⁹⁹ As amended by: Directive 2011/83/EU of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

¹⁰⁰ As amended by: Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 (OJ L 141, 4.6.1999, p. 20). The provisions of the Regulation shall, be read with certain adaptations which are outlined in Annex III.

¹⁰¹ The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptation: in Article 4(2), the reference to Decision 84/133/EEC shall be read as a reference to Decision 89/45/EEC.

- Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 OJ L 218, 13.08.2008, p. 30–47.
- Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC, OJ L 153, 22.05.2014, p. 62–106.
- Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment.
- Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products, JO L 342 du 22.12.2009, p. 59–209.
- Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (Text with EEA relevance) OJ L 200, 31.7.2009, p. 1–24.
- Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC OJ L 136 of 29.05.2007.
- Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use OJ L 311, 28.11.2001, p. 67–128.
- Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts, OJ L 96, 29.03.2014, p. 251–308.
- Directive 2014/32/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of measuring instruments (recast), OJ L 96, 29.03.2014, p. 149–250.
- Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices OJ L 189, 20.7.1990, p. 17.
- Council Directive 93/42/EEC of 14 June 1993 concerning medical devices OJ L 169, 12.7.1993, p. 1.
- Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices - OJ L 331, 7.12.1998, p. 1–37.
- Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels Text with EEA relevance OJ L 96, 29.03.2014, p. 45–78.

- Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (recast) Text with EEA relevance OJ L 96, 29.03.2014, p. 1–44.
- Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of nonautomatic weighing instruments Text with EEA relevance OJ L 96, 29.03.2014, p. 107–148.
- Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (recast), OJ L 178, 28.06.2013, p. 27–65.
- Directive 2013/53/EU of The European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft and repealing Directive 94/25/EC, OJ L 354/90.
- Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment, OJ L 174, 01.07.2011, p. 88–110.
- Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys, OJ L 170, 30.6.2009, p. 1–37.
- Product Safety and Market Surveillance Package - Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - 20 actions for safer and compliant products for Europe: a multi-annual action plan for the surveillance of products in the EU; COM(2013) 76 final, 13.2.2013.

EEA Joint Committee decision still pending

- Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (recast).
- Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits.
- Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (recast) Text with EEA relevance OJ L 96, 29.03.2014, p. 309–356.

Still under scrutiny by EEA /EFTA

- Regulation (EU) 2016/424 of the European Parliament and of the Council of 9 March 2016 on cableway installations and repealing Directive 2000/9/EC
- Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC

- Regulation (EU) 2016/426 of the European Parliament and of the Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142/EC

Proposals with possible EEA relevance

- Proposal for a Regulation of the European Parliament and of the Council on consumer product safety and repealing Council Directive 87/357/EEC and Directive 2001/95/EC COM(2013)078 final - 2013/0049 (COD).
- Proposal for a Regulation of the European Parliament and of the Council on market surveillance of products and amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC, 2011/65/EU, Regulation (EU) No 305/2011, Regulation (EC) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council COM(2013)075 final - 2013/0048 (COD) 13.02.2013.
- Proposal for a Regulation of the European Parliament and of the Council on medical devices, and amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 COM(2012) 542 final 2012/0266 (COD) 26.9.2012.
- Proposal for a Regulation of the European Parliament and of the Council on in vitro diagnostic medical devices (Text with EEA relevance) COM(2012) 541 final 2012/0267 (COD) 26.9.2012.

Travel and Transport:

- Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ No L 158, 23.6.1990, p. 59).
- Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast), OJ L 293, 31.10.2008, p. 3–20.
- Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport OJ L 55, 28.2.2011, p. 1–12.
- Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway OJ L 334, 17.12.2010, p. 1–16.
- Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts OJ L 33, 3.2.2009, p. 10–30.
- Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p. 1–9.
- Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations OJ L 315, 3.12.2007.
- Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents OJ L 131, 28.5.2009, p. 24–46,.

- Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier OJ L 344, 27.12.2005, p. 15–22.
- Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, OJ L 46, 17.2.2004, p. 1–8.
- Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents OJ L 285, 17.10.1997, p. 1–3.

Adopted EU acts with EEA relevance under scrutiny by EAA and EFTA

- Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC

Proposed acts with possible EEA relevance

- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air COM(2013)0130 final - 2013/0072 (COD) 13.03.2013.

Financial Services:

EEA Agreement and its Annex III request the adaption of various EU secondary acts in the field of financial services. The Directives listed hereunder are chosen because of their relevance for consumer protection matters. For a list of all acts in the field of financial serves, see Annex III of EEA Agreement.

Incorporated into the EEA Agreement

- Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16).¹⁰²
- Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (OJ L 319, 5.12.2007, p. 1).¹⁰³
- Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing

¹⁰² As amended by: Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 (OJ L 149, 11.6.2005, p. 22) and Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 (OJ L 319, 5.12.2007, p. 1).

¹⁰³ As corrected by OJ L 187, 18.7.2009, p. 5, as amended by, Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 (OJ L 302, 17.11.2009, p. 97).

Regulation (EC) No 2560/2001, OJ L 266, 9.10.2009, p. 11; as amended; consolidated version (2012).

- Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.12.2009, p. 1.
- Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, OJ L 345, 8.12.2006, p. 1.
- Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (FiCoD), OJ L 35, 11.2.2003, p. 1; amended by Directive 2011/89/EU (FiCoD I), OJ L 326, 8.12.2011, p. 11.
- Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC. O.J. L 133/66 of 22.5.2008. ¹⁰⁴
- Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings, OJ L 374, 31.12.1991, p. 7; as amended.

Still under scrutiny by EEA /EFTA

- Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU Text with EEA relevance, OJ L 173, 12.6.2014.
- Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property OJ L 60, 28.2.2014, p. 34, 85.
- Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Omnibus II), OJ L 153, 22.5.2014, p. 1.
- Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (CRD IV), OJ L 176, 27.6.2013, p. 338.
- Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR), OJ L 176, 27.6.2013, p. 1.

¹⁰⁴ As amended by: Commission Directive 2011/90/EU of 14 November 2011 (OJ L 296, 15.11.2011, p. 35).

- Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC - PSD II.
- Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products – PRIIPs.
- Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.
- Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) - IMD II.
- Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 - FTR II.
- Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions – MIFs.

Enforcement of consumer protection law / (Alternative) Dispute Resolution:

Incorporated into the EEA Agreement

- Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30)¹⁰⁵,
- Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (OJ L 364, 9.12.2004, p. 1)¹⁰⁶,
- Commission Decision 2007/76/EC of 22 December 2006 implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance (OJ L 32, 6.2.2007, p. 192),¹⁰⁷
- Commission Implementing Regulation (EU) 2015/1051 of 1 July 2015 on the modalities for the exercise of the functions of the online dispute resolution platform,

¹⁰⁵ As amended by: Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 (OJ L 165, 18.6.2013, p. 1), Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 (OJ L 165, 18.6.2013, p. 63).

¹⁰⁶ As amended by: Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 (OJ L 149, 11.6.2005, p. 22), Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 (OJ L 332, 18.12.2007, p. 27), Regulation (EU) No 954/2011 of the European Parliament and of the Council of 14 September 2011 (OJ L 259, 4.10.2011, p. 1), Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 (OJ L 55, 28.2.2011, p. 1), Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 (OJ L 334, 17.12.2010, p. 1), Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 (OJ L 165, 18.6.2013, p. 1), Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 (OJ L 165, 18.6.2013, p. 63).

¹⁰⁷ As amended by: Commission Decision 2008/282/EC of 17 March 2008 (OJ L 89, 1.4.2008, p. 26), Commission Decision 2011/141/EU of 1 March 2011 (OJ L 59, 4.3.2011, p. 63).

on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes (OJ L 171, 2.7.2015, p. 1).

- Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, OJ L 9, 15.1.2003, p. 3.

EEA Joint Committee decision still pending

- Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (OJ L 165, 18.6.2013, p. 63).¹⁰⁸
- Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 1).¹⁰⁹

¹⁰⁸ The provisions of the Regulation shall, be read with certain adaptations which are outlined in Annex XIX.

¹⁰⁹ The provisions of the Regulation shall, be read with certain adaptations which are outlined in Annex XIX.

NOTES

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