



The notion of 'consumer' in EU law

The notion of 'consumer' is a key concept delimiting the application of consumer-protection rules. However, not only is there no consistent and uniform definition in EU law, there are also divergences amongst the Member States.

Background

The notion of consumer stems from economics and sociology. Nevertheless, it has developed an autonomous meaning in the legal domain, having become the factor triggering the application of a distinct set of rules, known collectively as 'consumer protection law'.

In EU law, the notion of 'consumer' is of crucial importance not only in the growing [consumer acquis](#) but also in EU private international law, in particular in the [Rome I](#) and [Brussels I](#) Regulations, which include specific rules for consumer protection. Furthermore, the Commission's proposal for a [Common European Sales Law](#) (CESL) includes a subset of rules applicable to consumer transactions.

Each EU instrument defines 'consumer' for its own purposes. Although those definitions essentially converge, there are nonetheless some differences. This has prompted the Commission to [emphasise](#) that a consistent and uniform definition would help delimit the scope of the consumer *acquis* more accurately. Furthermore, owing to the [minimum](#) (as opposed to [full](#)) harmonisation character of the bulk of the consumer *acquis*, many Member States (MS) extend the personal scope of their consumer protection law beyond the definition of 'consumer' in EU law.

Definitions of 'consumer' in EU law

Despite being phrased in different ways, the vast majority of the definitions of the [notion of 'consumer'](#) found in EU legislation include a common core. Accordingly, a consumer is a **natural person**, who is acting outside the scope of an economic activity (trade, business, craft, liberal profession).

The definition is a negative one, i.e. it requires that a consumer act *outside* the scope of a business. The directives diverge in the

definition of economic activity; in particular some include 'craft', while others do not. A more far-reaching exception is to be found in the [Package Travel Directive](#) which uses a broad notion of 'consumer', extending it to include companies and business travellers (as purchasers and users of travel services).

Variety of definitions in the MS

The legal systems of the MS vary to a great extent as regards the scope of the [notion of 'consumer'](#). The vast majority of MS have one, overarching definition which applies across consumer law (e.g. Austria, Germany, Poland). Some have a couple of definitions, depending on the context. There are also MS where the notion is defined separately in each transposing act. Finally, in France the notion of consumer is not defined at all, and it is left up to the courts to decide whether under given circumstances someone should be considered a consumer.

Legal persons as consumers

EU law

Under EU law, the notion of consumer does not extend to legal persons, even if they have a non-business character (e.g. non-profit associations). The Court of Justice has consistently [held](#) that EU definitions of consumer must not be given a [wider](#) interpretation. This does not preclude MS from adopting wider definitions in national legislation in areas covered by minimum harmonisation.

National laws

It is argued that some legal persons, such as associations, owing to their lack of bargaining power and experience, should be treated as consumers. This has prompted a number of MS to include legal persons in the definition of 'consumer', if they are either acquiring goods or services for private use (e.g. Austria, Czech Republic) or act as final users (e.g. Greece, Spain). In France, a parallel notion of 'non-professional' is used to grant consumer protection to legal persons in certain cases.

Employees as consumers

In German case law, the notion of consumer has also been extended to employees (but not self-employed persons). They can rely on the national rules transposing the [Unfair Terms Directive](#) to request a court to review the standard terms of their labour contract.

SMEs as consumers

Under EU law [small and medium-sized enterprises](#) (SMEs) are never treated as consumers, even in the case of self-employed traders or family businesses. However, some MS extend consumer protection rules to cover them too. For instance, in the Netherlands small enterprises (up to 49 employees) may rely on certain rules on unfair terms in contracts on an equal footing with consumers. In France, courts grant consumer protection to sole traders, provided that the contract in question does not directly relate to the trader's business activity. In the UK, companies may rely on consumer protection against unfair terms if they purchase goods of a type they do not ordinarily deal with.

Mixed transactions

A particularly controversial area is so-called mixed transactions which a person concludes for both a personal and professional purpose. This occurs especially in the case of self-employed persons who buy dual-use objects such as a computer or car. There are four possible approaches to mixed transactions. They either:

- never count as consumer transactions, or
- count as consumer transactions *if the personal purpose prevails*, or
- count as consumer transactions *if the business purpose is marginal*, or
- always count as consumer transactions.

Most of the consumer *acquis* does not explicitly address the issue of mixed transactions. The exceptions include the [Product Liability Directive](#), which applies to defective products used 'mainly' for private purposes and the preamble to the [Consumer Rights Directive](#) which indicates that if the trade purpose 'is so limited as not to be predominant in the overall context', a dual-purpose transaction should count as a consumer contract.

Initially, the Court of Justice [held](#) that even a minor connection with a person's professional activity excludes the transaction from the scope of the [Doorstep Selling Directive's](#) consumer protection rules. Later the Court [ruled](#) that if the business purpose of the transaction was negligible in the overall context of the supply, the person could rely on consumer protection rules. However, it stressed that the predominance of the private element is by itself irrelevant. According to the same ruling, a person cannot claim the status of consumer if they have negligently created the impression that they were acting in the course of a business (e.g. by using a company letterhead or address).

National laws

The majority of MS do not have any explicit rules on mixed transactions. However, some countries treat them as consumer contracts if the personal purpose prevails (Germany, Nordic countries) or if the link to a business activity is only 'indirect' (Poland). Austrian and Belgian laws, on the other hand, explicitly exclude mixed transactions from the scope of consumer contract law entirely.

Draft Common Frame of Reference

Under the [Draft Common Frame of Reference](#) (DCFR), a mixed transaction is covered by consumer protection rules if it is concluded 'primarily' for non-professional purposes. Furthermore, if the same contracting party can be treated both as a trader and as a consumer, they may rely on the consumer protection rules *vis-à-vis* the other party who is a trader. However, this approach has not as yet been implemented in any binding EU instrument.

Business start-up activities

The consumer *acquis* does not directly address the issue of transactions concluded by a person who is not yet conducting an economic activity, but is planning to do so. According to the [Court of Justice](#), such a person does not enjoy consumer protection under EU private international law. However, the Directive on [distance marketing of financial services](#) explicitly acknowledges that MS may treat such persons as consumers. Austria has regulated this issue explicitly, including natural persons who are starting up a business in the definition of consumer.