

Which?

POLICY REPORT SEPTEMBER 2017

**The Which? round tables
on exiting the EU:**

**Achieving the
best outcome
for consumers**

Achieving the best outcome for consumers

The UK's decision to leave the EU will have many implications for consumers. Whether or not these are positive or negative will depend on the outcome of the negotiations over the coming months, as well as how the future policy regime across different sectors evolves once the UK has greater flexibility to shape it.

Between January and June 2017, Which? hosted a series of round tables with experts from across government, businesses, consumer and wider public interest groups under the Chatham House rule to consider what the main issues could be for consumers across some of the main sectors.

The discussions focused on the opportunities and risks and what these mean for the Government's priorities during key stages of the negotiations to leave the EU, as well as the UK-EU future relationship, wider trade policy and any subsequent UK regulatory reform.

Prioritising consumer interests

Which? has emphasised the importance of the Government assessing the impact on consumers and prioritising their interests throughout the process. Consumer confidence is important for consumers themselves, but is a vital ingredient to a successful and buoyant UK economy with people spending £100 billion pounds a month. The Government must therefore make it clear to the public that consumers are front and centre of the Brexit negotiations. We have an opportunity through the Brexit process to create a new economy, where essential markets that are currently failing consumers are reformed and where consumers have the confidence to spend and propel growth.

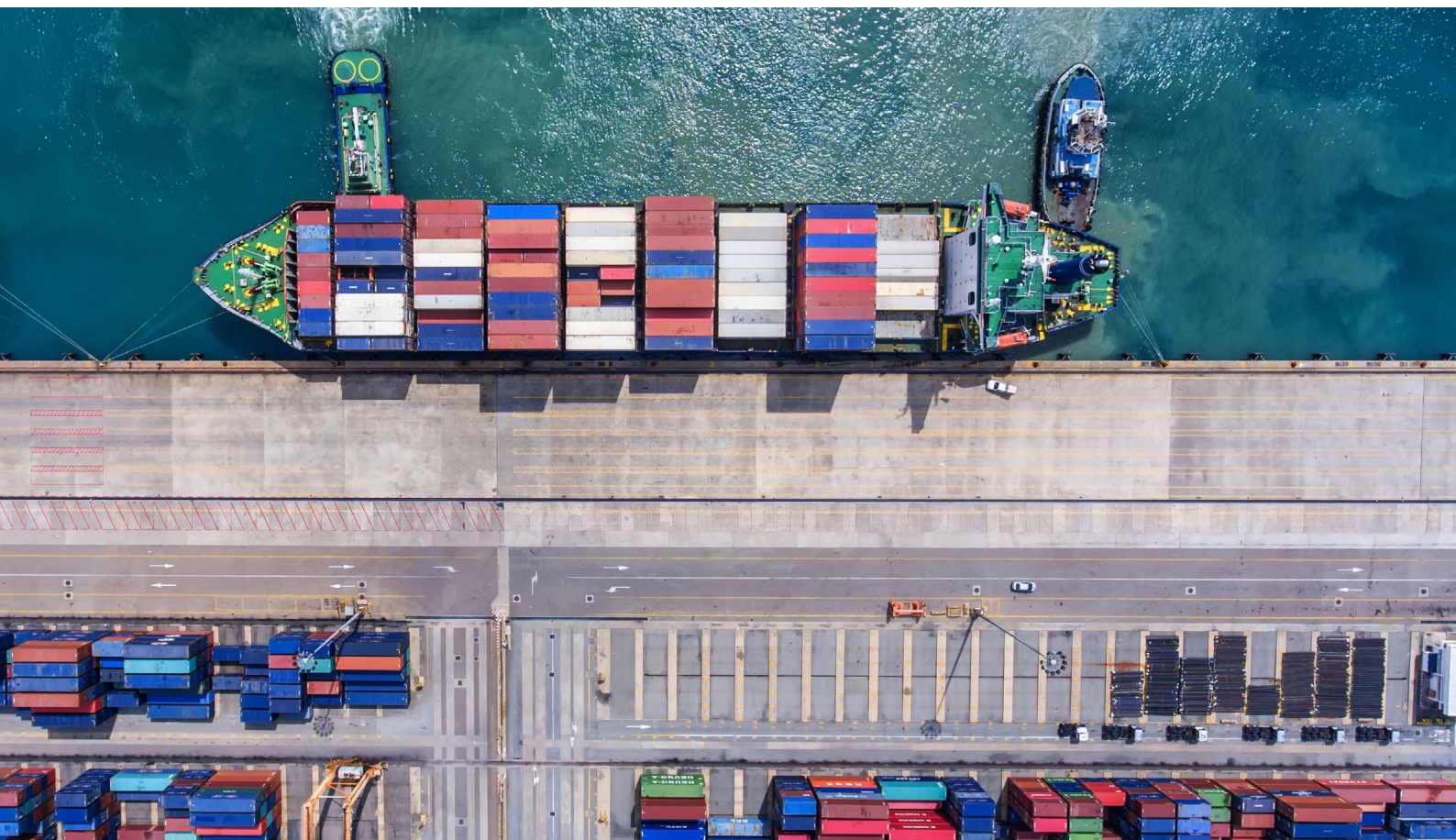
Many aspects of consumer policy and consumer rights are currently determined as part of the EU. But EU sectoral legislation and policy also shape the protections, rights and choices that consumers have across many sectors, from agriculture to airlines.

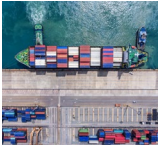
The Which? round tables looked at:

- Trade and competition
- Energy
- Food
- Consumer rights
- Financial services and
- Travel and holidays.

The general themes that emerged from these round tables are set out below in order to inform further debate and policy development.

Round table 1
**Cross-cutting trade
and competition issues**





Round table 1

Cross-cutting trade and competition issues

The first round table focused on understanding the broad implications of the decision to leave the EU for trade and competition.

- *There is potential for a broad range of impacts on consumer prices.* These need to be understood and mitigated to the extent possible. This includes the more immediate impact of exchange rates, but also uncertainty around investment, import costs, the cost of doing business (for example, customs checks), potential for increased labour costs and knock on effects on public services and pensions – as well as the potential impact of tariff changes.
- *There could also be a risk to quality and safety standards.* This could arise, for example, if we reach new trade deals with countries that have different standards to the EU (e.g. the US and beef hormones), as well as loss of influence over the development of EU standards.
- *Robust consumer enforcement will therefore be important.* Conformity assessment and enforcement of standards will, in general, become much more complex but crucial at a time when Trading Standards resources within local authorities are already very limited.
- *The complex and multi-national nature of supply chains need to be understood.* These will have implications for all of the above, with some goods crossing multiple borders, multiple times.
- *Consumer rights must be maintained.* Current EU protections, including how they are interpreted by the Courts, must be preserved, for example, unfair terms, aggressive selling and unfair practices, poor quality and unsafe products. There has to be a particular focus on cross-border issues.
- *The UK will have to take on the enforcement of competition law.* There are major resource implications for the Competition and Markets Authority (CMA) as its jurisdiction extends.
- *Aviation is one example of the potential wide range of issues that will need to be addressed.* The risks include potential limits on choice, loss of cheap flights if issues around access rights are not addressed, potential safety issues if outside the European Aviation Safety Authority, potential risks for consumer redress/compensation - and associated impacts and costs eg. roaming charges, package travel protections and loss of the European Health Information Card.

Round table 2
Energy





Round table 2

Energy

This focused on the risks and opportunities for consumers in terms of any changes to the market and policy framework for the energy sector.

- *There are features of the energy market that raise a number of risks.*
The extent to which they are realised depends on what the UK's relationship with the EU internal energy market (IEM) will be. There is uncertainty about how the UK can stay part of the IEM and the wider consequences if we do, but are not an EU member – for example, the potential to be a “policy taker, not maker”.
- *Exiting the EU is not necessarily the greatest risk for the sector.* The energy market (particularly retail) is undergoing a huge transformation. Some suggested that Brexit is lower down the priority list than it is for other industries.
- *There will be different impacts for different types of energy.* To measure the impact of Brexit, it is important to separate oil (which is traded on a global level) from gas and electricity (which is largely from network based industries). The latter is far more dependent on trade with the EU and European Free Trade Association (EFTA).
- *There are a number of potential short and long-term risks.* There is a short term impact of a weak pound and subsequent wholesale cost rises. There is also a potential impact on investment – although there have been a number of Government decisions since the previous election in 2015 that have impacted investment, of which Brexit is one. Concern was raised that the Government could rein back on its environmental obligations.
- *There is also a risk that consumer protections could be threatened.* This could, for example, be through “horse-trading”, or through a deregulatory climate that could put pressure on the sector to remove protections. Environmental Performance Certificates (EPCs) when selling a property were one example.
- *The key issue is our relationship with the IEM.* If the UK retained access to IEM but without the policy making power, there are questions about what will happen when the IEM goes in a different policy direction to UK policy. The risks are heightened for Ireland which has a huge dependency on the UK energy market.



- ***There is potential for regulatory divergence.*** There is also an issue around whether the EU will continue to have a more prescriptive regulatory model or adopt more of a ‘framework’ approach, as in the UK. The latter was thought to be more likely.
- ***On-the-day trading is also a concern.*** If the UK does diverge from IEM policy, the EU is unlikely to support UK access to the market if the UK is trying to undercut the broad thrust of EU policy. Domestic energy policy will need to withstand greater uncertainty over longer periods without the larger EU framework - and also taking into account the UK political cycle.
- ***There is an opportunity to develop a clear British policy on energy.*** The 5th carbon budget and new industrial strategy could allow the UK to look beyond electricity and to a broader framework that considers heat and transport. The UK will no longer be bound by state aid rules, so some suggested that there could be opportunities to increase capacity. More specifically, there could be an opportunity to re-examine the approach to smart meter roll out.
- ***Energy efficiency, particularly around heat, will be one of the biggest areas moving forward.*** Making it cheaper to improve consumers’ energy efficiency will be the key. However, the UK has been a laggard on this issue within the EU, so would not necessarily change once outside the EU.
- ***There are some specific consumer opportunities that Brexit offers.*** These could include VAT cuts (although those would have implications for social obligation programmes) and renewable energy products (e.g. insulation).
- ***It was suggested by some that Brexit is a “red-herring”.*** A revolution will come through data and technology regardless.
- ***Consumer engagement is crucial.*** More generally, it is important that there is effective consumer engagement in the assessment of potential trade-offs between short and long-term impacts and policy. This is difficult when the discussions are very technical in nature (e.g. interconnectors between countries), but still needs to be done.

Round table 3
Food





Round table 3

Food

This also included a range of stakeholders and focused on issues such as food affordability, standards and wider food and farming policy.

- *The shape and structure of the UK food industry is based on our EU membership over the last 40 years.* If we are changing this framework, businesses will be required to change how they operate. Most will be able to adapt, but uncertainty about the future relationship and terms of access to the single market make it very difficult to plan ahead.
- *There was general agreement that the current regulatory framework is fit for purpose.* There are no obvious areas where change is needed. Maintaining consumer confidence in food safety and quality is essential, the current framework is fit for purpose and so there should be no lowering of standards.
- *Future relationships with EU bodies need to be clarified.* Although the current requirements would continue as they will all be included within the Repeal Bill, operational aspects to give effect to these requirements, including the UK's relationship with the European Food Safety Authority also need to be clarified.
- *Food prices were recognised as a key concern.* Recent price rises have been caused by currency rates, but the rising cost of labour is also having an impact in some parts of the chain.
- *Tariffs, particularly if under a WTO 'most favoured nation' (MFN) tariff regime, could have a significant impact.* At retail level, around £4 billion of food is imported from the EU and £1 billion from other locations. Should the current EU MFN rates apply, the average rate would be 22%, with some foods facing substantially higher rates than this, for example, beef at 62%. What this means in terms of actual consumer prices is uncertain, but costs would be passed on. Clarity around what to expect was needed as soon as possible. There will not be just one 'cliff edge' for the industry, but a series of 'mini' cliff edges for different businesses.
- *The UK Government should consider afresh what the key food policy priorities should be.* It is important to put consumers at the heart of policy decisions, taking into consideration expectations around standards.



- *Farm support could be looked at in a similar way.* The question was posed as to how you would most effectively use any funding to support consumer priorities. More consumer engagement is needed to help understand these issues, building on what has already been done by Which? and others. For example, how consumers want food to be produced in the UK and how they want the landscape to be shaped.

Round table 4
Consumer rights





Round table 4

Consumer rights

The fourth round table focused on the implications for consumer rights and their enforcement, both by consumers and by public authorities.

- *General consumer rights should not be looked at in isolation from rights and protections within specific sectors (eg. flights, financial services).* Competition also plays an important role in delivering for consumers.
- *The changing environment, in particular the digital revolution, raises challenges for legislation to keep pace.* Consumer rights shouldn't just be considered in terms of the formal 'consumer acquis' that is currently in place at EU level, but also include data protection rules. The development of the EU Digital Single Market and how the UK responds to it are important, along with consistency with the EU's General Data Protection Regulation (GDPR) which will come into effect in May 2018. Any deviation from this by the UK would have implications for UK-EU trade.
- *The UK has helped to shape the current EU approach.* The UK has played an influential role in determining EU legislation and on the whole, subject to the on-going REFIT of the consumer acquis, this was considered to have served UK consumers' interests. A big challenge is the extent of UK regulatory equivalence with the EU on leaving and in the longer-term as the EU evolves. In either case the UK will no longer have the same influence. The lack of certainty around where the REFIT is heading is also an issue.
- *Co-operation on enforcement will continue to be important.* Information exchange, as well as co-operation on enforcement, through some continuing form of the Consumer Protection Co-operation Network is important. Strengthened cooperation with jurisdictions outside the EU is also important.
- *Greater flexibility may be beneficial.* There is potential for greater flexibility as we move from the primacy of European Court of Justice legal interpretation of the consumer law. This could mean that the existing consumer acquis, while transposed into UK law through the Repeal Bill, could be interpreted differently going forward e.g. if the Supreme Court interpreted a 'transactional decision' differently.



- *Consumer landscape reform becomes more urgent.* The implications for already stretched Trading Standards enforcement and reform of the consumer landscape were discussed. The potential for greater empowerment of consumers also needs consideration, recognising that consumer law is underpinned by private rights, and this could help take some of the pressure off public enforcement, e.g. through collective redress.
- *Cross-border enforcement of consumer rights will be challenging and a solution will be needed.* The scope for consumer confusion and uncertainty about how far they will be able to enforce their rights was discussed particularly around cross-border transactions where consumers are currently protected. The threat to private international law enforcement is one of the biggest risks, if current reciprocity no longer applies.

Round table 5
Financial Services





Round table 5

Financial Services

This discussion focused particularly on retail financial services, while also considering the wider implications for the sector.

- *The risks to the retail sector were considered to be relatively limited.* The amount of cross-border trade is small, businesses felt they would find a way to adapt and participants considered that the main repercussions were from the greater risk facing wholesale banking – which had broader implications for the economy.
- *There was a recognition that consumers currently have very little financial head room to buffer any financial storms ahead.* This could present a challenge in the coming years as the EU exit takes time to level out. Financial security of consumers was therefore an important consideration.
- *It was felt that there is a policy challenge from consumer credit.* It may be tempting to continue to allow consumers to borrow and prop up the economy, but with that comes the risk of the bubble bursting. But clamping down on credit availability could also be politically unpopular.
- *The status of existing cross-border products needs to be addressed.* Concern was raised over the treatment of contracts and products concluded or purchased before Brexit but which will apply after the UK has left the EU, including insurance and investments. The negotiations would need to find a suitable solution with options to resolve the issue through passporting or grandfathering.
- *Brexit could lead to de-regulation that is not in the consumer interest.* It was, however, currently felt that there was not an appetite for such de-regulation.
- *The main opportunity is the chance of greater flexibility to re-shape the regulatory framework so that it suits UK needs.* There is an opportunity for faster law making compared to how legislation is made in the European Union. However there were questions over the capacity of Parliament to improve legislation and effectively scrutinise it given the amount of legislation that will be required.
- *There is an opportunity to improve the quality of firms operating in the UK.* It was suggested that some companies currently obtain a passport issued through a less stringent process than the UK would apply, but they are still allowed to operate in the UK.



- *There is a chance for greater innovation.* Given the slower approach of Brussels on financial services innovation it was felt that, if the UK is equipped suitably, London could lead the sector even more effectively as an innovation hub.
- *International engagement will be even more important.* The UK will need to adapt its approach following Brexit and start operating more internationally, using international fora, such as Basel, to secure international consensus on rules.

Round table 6
Travel and Holidays





Round table 6

Travel and Holidays

This considered the implications for travel and holidays abroad as well as in the EU, with a strong focus on air travel.

- *The importance of an aviation agreement if outside the EU open skies agreement was a key concern.* This will be essential to enable airlines to continue to fly, to the EU and beyond. The cliff edge could be sooner than March 2019 as airlines sell tickets around eleven months in advance. At this point they are unlikely to know if they will have the rights to fly to the same destinations. “Open skies” is seen as bringing enormous consumer benefits in opening up the airline market.
- *Airports could be affected if certain routes stop.* This is particularly the case for smaller airports.
- *There could also be price implications.* The pricing model of airlines is often reliant on links to other flights; not only point to point journeys. Freight is also an important business that keeps passenger prices lower. The customs regime could therefore impact on this – both in terms of costs, but also airport capacity to do the necessary checks.
- *The exchange rate is already having a big impact on the cost of holidays.* The weak pound is, however, benefiting some businesses because it has brought down the cost of holidays in the UK for people from other countries.
- *Freedom of movement is an important consideration for this sector.* Travel and tourism in the UK is heavily reliant on EU labour. Competition is likely to grow for a more limited pool of people within the hospitality industry, with potential for seaside resorts to lose out to the big cities. Ease of travel is also important for UK employees accompanying people outside the UK as part of the travel and tourism product.
- *Continued membership of the European Aviation Safety Agency will be beneficial.* Otherwise the Civil Aviation Authority will have to set up a UK equivalent. It was assumed that the costs of setting up a new agency would be passed on to businesses and ultimately consumers.
- *Inconvenience should not be under-estimated and can easily affect consumer confidence.* This includes issues such as visas and pet passports, on-going access to the European Health Insurance Card (EHIC), which the government has said will be guaranteed, and roaming charges.



- *Protections on issues such as flight delays and package travel will need to be transferred through the Repeal Bill.* Some protections already exist in UK legislation and are unlikely to be immediately affected by Brexit but the Government is expected to use the Bill to ensure EU based protections continue. Over time, there may be divergence between UK and EU consumer protections - for example because of different case law.
- *Access to data needs to be ensured.* This will be a key issue for price comparison sites.
- *Clear communications will be important for consumers.* Given the potential changes Brexit may or may not bring to the consumer experience, clear communications to reassure consumers or to inform them of any changes will be important to retain consumer confidence.



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