



# Supplementary evidence on UK-EU Trade inquiry

House of Lords Internal Market Sub Committee

Which? welcomes the opportunity to provide supplementary evidence to the inquiry, following our submission in November 2016.

We have set out examples of the types of issues that should be considered and addressed under potential Brexit scenarios, in relation to consumer interests and protection.

In setting out these scenarios, Which? recognises that the breadth of impacts on consumers' rights and protections are currently difficult to predict, particularly as hybrid models may be possible as part of the negotiations. Nevertheless the non-exhaustive table provided aims to set out the possible implications at a high level based on key aspects of existing consumer protection.

It is crucial that the Government anticipates these issues and takes steps to mitigate any risks that could undermine current consumer rights and protections – and, where appropriate, addresses any gaps or loopholes that currently exist. This includes during the negotiations as well as when reviewing legislation as part of the Great Repeal Bill or other legislative changes.

It is therefore essential that these issues are at the forefront of policy making as we start to prepare for exiting the EU and that all possible options are considered through a consumer interest lens. This will require effective consumer engagement as part of the process.

For some issues, the risks or opportunities are likely to be reasonably clear; but for others, there may be complex trade-offs that will need to be made – between competing interests, and in some cases between competing consumer interests, for example expectations of price versus quality standards. With such a wide ranging task ahead, it is also important to ensure that the longer-term implications for consumers, as well as more immediate concerns are anticipated and addressed.

#### **Which? is a consumer champion**

We work to make things better for consumers. Our advice helps them make informed decisions. Our campaigns make people's lives fairer, simpler and safer. Our services and products put consumers' needs first to bring them better value.



Examples of potential implications for consumers’ protection

Issue	Current protections as part of the EU single market	EEA or EFTA (access to single market, but out of EU)	WTO (or bilateral trade agreement) i.e. outside single market
General consumer rights	<p>Core consumer protection rules currently set out a range of rights that apply when a consumer buys a product within the EU – from protections against unfair contract terms and unfair commercial practices to rules around the sale of goods and price indications.</p> <p>For example, the Consumer Rights Directive provides consumers with a 14 day cooling-off period to return unwanted online purchases. The Unfair Commercial Practices Directive bans harmful activities such as “bait and switch” advertising, falsely claiming that special offers are for a limited time only, or demanding payment for products the consumer didn’t ask for. The Unfair Contract Terms Directive introduces a presumption that certain types of terms are unfair and therefore void, such as terms that limit a trader’s obligation to comply with commitments made by the trader’s agent.</p> <p>The Consumer Protection Co-operation (CPC) Regulation also establishes a system for cross-border co-operation in the enforcement of EU consumer rights.</p>	<p>The UK would still be obliged to comply with core EU consumer protection laws, but may lose its bargaining power in the negotiation of those rights once it becomes a non-Member State. The UK would only be able to introduce new regulation to address national issues where this was permissible under EU law (e.g. because the EU framework was established by a minimum harmonisation Directive). It is also likely that the UK would be bound to follow the jurisprudence of the European courts in relation to consumer rights.</p> <p>The UK would need to revisit the extent and nature of its involvement in the CPC network. We would need to ensure that whatever arrangement was reached on cross-border enforcement, the mechanism for co-operation was efficient and effective.</p>	<p>The UK’s core consumer protections are currently aligned with EU rules or go beyond EU minimum standards. So, as a starting point, key features of the EU regime would likely be retained. As laws are reviewed over time, it will be imperative to ensure that key protections - such as the requirement on traders to provide consumers with the information needed to make informed decisions - are not lost.</p> <p>There would also be new opportunities to tackle domestic issues in a way that is currently prevented by maximum harmonisation EU rules. For example, our 2015 super-complaint on pricing in the groceries market identified misleading special offers being used by traders. The EU rules on this area are found in the Unfair Commercial Practices Directive, which is a maximum harmonisation instrument. If the UK moved outside the single market, it would no longer be restrained from tackling such issues head on.</p> <p>It is also possible that existing threats to important UK consumer protections would fall away. For example, as part of the EU’s Digital Single Market Strategy, the Commission is seeking to implement new rules for the online sale of goods on a maximum harmonisation basis. As currently drafted, that proposal would mean that UK consumers lose long-</p>

			<p>standing national protections, such as the right to return a faulty good and get a full refund in the first thirty days. In response to a survey conducted on this issue in December 2015, an overwhelming majority of Which? members told us that if they bought a product online and subsequently discovered it to be faulty, they would expect to be able to both ask for a replacement or demand a full refund. Outside of the single market, the UK would be free to retain such protections.</p> <p>The UK would need to consider afresh how cross-border enforcement and redress could be achieved in this environment, both via co-operation with Member States and more widely.</p>
<p>Telecoms</p>	<p>The European institutions are currently working to reduce roaming charges for European consumers when they are in other member states. The details of this are currently being finalised but the aim is that by June 2017 there will be no limits in terms of timing or volume imposed on consumers when using mobile devices abroad in the EU. This looks to be accompanied by safeguards to prevent abuses based on residence and permanent links to an EU country, as well as in exceptional cases, in domestic markets.</p> <p>Since 30th April 2016 the maximum surcharge for roaming in the EU has been: up to €0.05 per</p>	<p>In our understanding of the current terms of this deal the UK, under these arrangements, the UK could still benefit from the abolition of roaming charges.</p>	<p>As it stands, and from what the Commission has said previously, the EU's Roaming Regulation is an internal market instrument. There are potential constraints regarding the extension of such an EU regulation beyond the EU's jurisdiction as the EU is bound by obligations concerning non-discrimination under WTO rules — any favourable conditions or treatment given through a bilateral agreement with a third country may therefore also have to be extended to all other WTO Members, without obliging them to offer reciprocal conditions. The UK could potentially offer a reciprocal deal, however this may lead to questions regarding other WTO members.</p>

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	<p>minute for outgoing calls, up to €0.014 per minute for incoming calls, up to €0.02 per text message and up to €0.05 per megabyte for data.</p> <p>The EU estimate that efforts undertaken on roaming has reduced the cost of making calls, sending messages, and accessing data across EU borders. It estimates that costs of data roaming have reduced by 96% (since 2012), while cost of calls (since 2007) and SMS (since 2009) have fallen by 92%.</p>		<p>This does not however prevent EU and non-EU operators from freely negotiating tariffs for 'international roaming'. Roaming Regulation price caps could be used as a benchmark.</p>
Product safety	<p>The General Product Safety Directive sets out overarching requirements that products placed on the market should be safe. This is supported by a range of more specific EU rules (e.g. for cars, toys, chemicals), as well as a system for setting product standards through the European Committee for Standardisation (CEN) and European Committee for Electrotechnical Standards (CENELEC). Market surveillance is also required by Member States and there is an EU rapid alert system (RAPEX).</p> <p>Revisions to the EU product safety framework have failed to make progress due to a lack of consensus in the European Council.</p>	<p>The UK would still be likely to be subject to the same product regulation in order to access the single market. Going forward, while the UK would no longer be deciding future EU regulations it would still be subject to them. Based on the Norway and Switzerland models, the BSI could still participate in EU standards setting through CEN and CENELEC.</p>	<p>The UK could set national requirements for product safety within a framework of WTO/GATT rules (although it is likely to be a requirement within any bilateral deal to meet the exact or equivalent standards - as a condition for trade with the single market).</p> <p>Ensuring that consumer interests are put first in any revision to regulations – and opportunities taken to enhance rather than weaken protections in light of recent safety concerns over white goods and cars - will be crucial. International standards bodies such as the ISO could become much more significant in this respect. The possibility of whether the BSI could remain a member of CEN and CENELEC is unclear. New approaches for co-operation on enforcement are likely to be necessary.</p> <p>In relation to the delayed revisions to the EU framework, given the possible</p>

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			<p>improvements that could be achieved, there may be an opportunity to explore how to progress this work outside of a single market framework. This could lead to greater protections on product safety.</p>
<p>Food safety, labelling and choice</p>	<p>A large body of EU legislation sets out requirements that determine the safety of food and what choices we can make. These rules apply to food traded within the EU as well as exports from third countries. The over-arching General Food Law Regulation, for example, requires a high level of human health protection and sets out a requirement for traceability of food ingredients. It also sets out how food risks should be assessed and managed, requiring an independent scientific assessment, while also recognising that other legitimate factors may also be relevant, such as ethical or welfare concerns for example (something very relevant to on-going discussions about how to control animal cloning for example). It also recognises the importance of the precautionary principle, when there is scientific uncertainty, but a risk to health. Beneath this sits more specific requirements, including rules on hygiene and meat controls, limits on contaminants in foods and requirements that certain foods (eg. novel foods that haven't been on the market before, packaging materials, additives and GM foods) have to be</p>	<p>The UK would be obliged to implement and comply with EU requirements in order to access the single market, but would not be part of the decision-making for the setting of future legislation. This could mean divergence on some issues (as just one example, some Member States have opposed the UK's traffic light nutrition labelling scheme).</p>	<p>The UK could set national requirements within a framework of WTO/GATT rules. It would be subject to EU standards or their equivalent as a condition for trade with the single market.</p> <p>Under the WTO's sanitary and phytosanitary (SPS) and technical barriers to trade (TBT) agreements, standards developed by the UN's Codex Alimentarius Commission which sets international food standards would be the main reference for any dispute.</p> <p>A key question would likely be how the UK would stand up for consumer interests on issues where they are currently protected under EU rules, but where other countries or Codex provide a lower level of protection. This includes beef hormones, which the US challenged and Codex standards allow, but where the EU has negotiated maintaining a ban. Other issues which are examples of where countries such as the US or Brazil which may be seen as opportunities for greater trade have weaker protection include the assessment, approval and labelling of GM foods, the ban on antibiotics used as growth promoters, use of animal cloning in food production and the use of poultry carcass treatments at the end of chicken processing to clean up</p>

	<p>independently assessed for safety based on data submitted by businesses and approved prior to marketing. Rules on health and nutrition claims have recently led to many misleading claims coming off the market and wider labelling rules cover the listing of ingredients (including production methods such as GM for example), origin of meat and allergens. They also define terms such as organic.</p> <p>The complexity and scale of food supply chains requires cross-border cooperation. EU rules to update requirements for official controls (which cover checks made in countries that export to the EU) are in the process of being updated. In the wake of the horsemeat scandal, the EU set up a mechanism ('Food Fraud Network') allowing for smoother information and intelligence sharing between EU governments, with a view to cracking down on food fraudsters operating across borders. This is in addition to the EU's rapid alert system for food and feed (RASFF).</p>		<p>contamination (rather than the EU's 'farm to fork' approach).</p> <p>The issues of food labelling and safety rules as highlighted in the first column would need to be monitored closely, as well as identifying how to ensure effective enforcement through mechanisms such as the RASFF and Food Fraud Network.</p>
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For more information, contact Simon Markall on 020 7770 7353 or [simon.markall@which.co.uk](mailto:simon.markall@which.co.uk)  
 Which?, 2 Marylebone Road, London NW1 4DF

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