



## The Need To Strengthen The Regulatory Framework Of Uzbekistan For Consumer Protection In E-Commerce

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### ABSTRACT

The article is dedicated to the analysis of the current state of legislation on e-commerce in Uzbekistan and its application in relation to consumers. It also investigates the extent to which legal norms on consumer rights can protect from harmful business practices in e-commerce. After examining the relevant theoretical concepts and foreign experience in the field of e-commerce and consumer protection, the author puts forward recommendations for their best implementation in the national context.

### KEYWORDS

E-commerce, consumer rights, UNCITRAL, retailer, goods and services, online-stores, trade platform, digital marketing.

### INTRODUCTION

In the context of market digitalization, consumers are increasingly involved in e-commerce. In 2019, e-retail sales accounted for just over 14 percent of global retail sales and this share is expected to reach 22 percent within the next 3 years [1]. Although, in

Uzbekistan this figure is marginal (just under 1 percent), there is ongoing growth in purchase of goods and services online [2]. Since e-marketing differs from traditional retail practice and has its specificities in seller and buyer relations, it is crucial that the relevant

legislation can provide adequate protection for the rights of the latter. In this article the author argues that the existing legal framework on e-commerce in Uzbekistan does not correspond to the realities of e-market. The sporadic law enforcement cannot ensure sufficiently strict compliance with consumer rights by businesses.

The importance of e-commerce for business today cannot be underestimated, as it improves companies understanding of consumer needs and makes products and services available to the global market with much less burden. The use of trading platforms by e-commerce firms allows to reduce transaction costs, serve as trade agents, connecting suppliers and buyers around the globe [3]. Especially,

it is beneficial for businesses operating in the context of free market economy [4]. Correspondingly, e-commerce enables consumers: to collect information on goods and services; to easily locate sellers; to make price comparisons; to order convenient delivery that allows them to make purchases on a computer or mobile device wherever they are [5]. Yet, consumers may not always be able to enjoy this comfort due to the lack of business practice regulation in e-trading. Therefore, there is immanent need for such regulation.

In the early 1990s, with the rapid growth in demand for the use of the Internet and its expansion in almost all spheres of social life, including the economy, the issue of regulating e-commerce became the subject of international attention [6]. According to WTO, e-commerce is “the production, distribution, marketing, sale or delivery of goods and services by electronic means. [7]” The

UNCITRAL Model Law on Electronic Commerce (1996) sets fundamental principles of non-discrimination, technological neutrality and functional equivalence [8]. Yet,

It does not place any emphasis on consumer rights, which are closely related to the sphere. Instead the document leaves it at the discretion of states whether

To include or exclude consumer protection norms in such legislation [9].

Compared with other CIS countries Uzbek legislator introduced a special law in the sphere of e-commerce at a relatively early stage [10], when the phenomenon itself was and still is underdeveloped [11]. The old version of the Law on Electronic commerce did not contain any norms pertaining to consumers. The updated version, on the other hand, obliges actors of e-commerce to comply with the rules of the Law of the Republic of Uzbekistan “On Consumer Rights Protection”.

The e-commerce rules also contain a similar reference to consumer rights [12]. Yet, neither the Law on Electronic Commerce nor the Law on Consumer Rights Protection specify rules for protection of consumers from the risks associated with technological features of the digital environment. Consequently, major part of digital marketplace in the country is remaining in grey zone [13]. According to Article 10 of the Law on E-commerce only legal persons or individual entrepreneurs can act as a seller. Yet currently there are hundreds

(if not thousands) of channels, groups and pages on social networks that promote goods and services whose owners hold neither status. Undoubtedly, this imposes a great risk on consumer rights and undermines their protection.

Effective law enforcement is a key element in protecting consumers from harmful and abusive practices in the digital marketplace [14]. Currently, the Agency for consumer rights protection under the Antimonopoly committee of Uzbekistan is in charge of overseeing the compliance with consumer rights by businesses. Yet, there is no clear regulation on how it carries out this function in e-commerce. Ministry for the development of information technologies and communications which is responsible to create favourable conditions for the development of e-commerce in the country, unsurprisingly, has no special power concerning consumer protection. Nor is it authoritative for business regulation. In this case, online purchase seems to be unjustified risk for most customers. This is one of the reasons for the slow pace of development of e-retail in the country [15].

According to 2014 rankings of UNCTAD B2C E-commerce Index, Uzbekistan was in 78 position among 130 countries (which is quite high given the country's developing economy) [16], whereas 2019 the results (86) show that e-commerce readiness of the country has considerably declined for recent years [17]. The index, for sure, cannot be treated as comprehensive assessment indicator of the e-commerce in Uzbekistan, but at least it shows how far the market is reliable and deserves consumer trust.

Another concern that can be raised at this point is the privacy and data security of customers. These issues are regulated in general terms without any specific linkage to consumer rights. The OECD Recommendations on Consumer Protection in E-Commerce 2016 defines key standards for consumer protection, taking into account the specifics of

payment for goods and services when making a purchase through the exchange of personal data, the purchase of products containing digital content, the use of mobile technologies, security risks and violations of privacy, payment protection and the security of products provided [18].

Despite being a relatively new vector of law, consumer protection in e-commerce has gained popularity among legal scholars. Peculiarities of e-commerce contracts, consumer fraud, data protection are some of the issues that give rise to frequent scholarly discourse. Jörg Binding and Kai Purnhagen, divide the relationship between online buyers and sellers into three dimensions: information flow, cash flow, and product flow. According to the authors, contractual relations in e-Commerce are distinguished by their virtuality, unlimited, multiplicity and pass through three main stages: pre-contractual; contractual; post-contractual [19]. Patil and Narayan add to the features of e-commerce contracts anonymity since "... the contract is concluded in cyberspace and the payment obligation is also effected online. Though the performance of the characteristic obligation of the contract (delivery of good) occurs in the real world in exactly the same way as offline contracts, the parties to the online transaction do not encounter each other during the transaction"[20]. Therefore, such relationships between the parties need special regulations and a dispute-resolution procedure with due consideration to the specifics of e-commerce [21].

The choice of jurisdiction is an important question before courts while addressing e-consumer complaints. Especially, the case becomes more complicated when the

customer and the seller are residents of different countries or the transactions have taken place in a country other than where the litigation has been initiated [22]. Because in case of the absence of prior agreement, an adjudicator has to decide upon the applicability of the legal provisions of the country where the case is being resolved [23].

The movement restrictions imposed due to unprecedented circumstances like Covid-19 pandemic encourage more and more customers to place their orders through internet platforms and online stores. This, of course, creates a high demand for goods and services of companies who run their businesses online.

A solid regulatory framework is needed to ensure that these business operators duly comply with consumer rights as they are supposed to do in the context of traditional trade practice. China, for instance, has such fairly effective system of protection for online customers. According to E-Commerce Law of the People's Republic of China "e-commerce operators shall comprehensively, truly, accurately and timely disclose the information of goods or services, protect information rights and selection rights of consumers. E-commerce operators shall not deceive or mislead consumers through false or misleading commercial promotion by means of fictitious sale, making up users' appraisal..." [24].

The law enshrines requirements for e-commerce platforms that simultaneously own self-operated business. Such platforms should operate in a way that does not mislead consumers about the two distinct types of their activity [25]. Chinese

e-commerce regulations are remarkable since they embed three important aspects that interplay in e-commerce: competition rules; consumer rights; intellectual property protection.

In 2019 India introduced a range of pragmatic regulations that have relatively improved consumer protection in the relevant market [26]. The Consumer Protection Act was supplemented with new rules concerning unfair trade practice, grievance redress, cancellation charges and consumer consent. The new regulations provide for duties and obligations of both e-commerce entities and marketplaces. In particular, e-commerce entities are obliged to appoint a grievance officer to ensure timely response to consumer complaints and to abstain from unfair business practices (misleading conduct or misrepresentation). The owner of an e-commerce marketplace should provide full information about the seller, return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, and grievance redress mechanism [27]. This helps the consumer make informed decision about goods (services).

Seeking redress for violated consumer rights is quite a burdensome process in the context of e-commerce. Online dispute resolution (ODR) schemes can relatively lessen this burden and allow to address consumer complaints against with minimal costs. Currently, these schemes are successfully functioning in different parts of the world including EU, US and Australia [28]. For instance, EU ODR platform facilitates the use of alternative means of dispute resolution (ADR) by parties [29]. ADR offers a simple, fast and low-cost out-of-court solution to domestic and cross-border disputes

between consumers and traders which arise from sales or service contracts [30]. The applicability of ADR to online transactions enables consumer to replace judicial redress procedure which is costly and time-inefficient in most cases. The popularization of ODR also lessens the workload for judiciary [31].

The ODR in Australia grew in tandem with private ADR. As forms of ADR small claim courts and industry ombudsman institutions frequently receive complaints from e-consumers [32]. Private dispute resolution scheme is popular with the American consumers as well. For example, the Better Business Bureau (BBB) whose main function is to advance marketplace trust among consumers, offers mediation and dispute resolution procedure [33]. The organization is not affiliated with any public authority and operates under industry self-regulation [34].

## CONCLUSION

Today, it is undeniable that e-market accounts for a considerable share of the global market. Consumers are willing to take advantage of the comfort available via the Internet. Yet, the lack of legal guarantees and unreliable protection mechanisms may diminish consumer confidence in e-market and thereby discourage them to shop online. Therefore, given the constantly growing demand for e-commerce, it is necessary to fill loopholes in the legislation of Uzbekistan, taking into account its intricate aspects, some of which have been discussed in this article. In this regard, due consideration should be given to the best foreign practices.

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