

# Beyond 1973: UK Accession and the Origins of EC Consumer Policy

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## Abstract

This article examines the role of the accession of the UK in the development of the European Community's consumer policy. It will show that British accession boosted the development of EC consumer policy by influencing the European Commission's 1975 programme for consumer and information policy and by providing the Commission with political legitimisation for developing its new consumer policy. Beyond accession in 1973, British membership in the EC contributed to the eventual prioritisation of an *economic* model of European consumer citizenship over competing approaches that favoured consumer protection in the EC from a *social policy* rationale. This historical examination reveals long term tensions between the UK's preference for market liberalisation and the creation of the common market, on the one hand, and attempts to safeguard national regulation, on the other – tensions which would resonate throughout the UK's membership of the EC/EU and beyond the area of consumer protection.

## 1 | INTRODUCTION

'The private consumer is the last and the least to be consulted as the various policies and practices of the Common Market are being developed' (Consumer Council, 1970, p. 23). This was the condemning evaluation of the director and economic advisor of the British Consumer Council after their visit to the European Commission in Brussels in October 1970. At the time, the United Kingdom (UK) was an aspiring member of the European Community (EC), but not yet a member state. In the UK, consumer representation within state institutions went back as far as the First World War (Hilton, 2003). Whereas the dire assessment of consumer representation in the EC by the British Consumer Council visitors to Brussels is therefore understandable, it should not have come as a surprise. After all, the treaty establishing the European Economic Community (EEC) of 1957 did not require member

states to confer general regulatory competences for matters relevant to consumers to the EC (Leczykiewicz & Weatherill, 2016). Consumer representation had not assumed a central position in the EC, and there was no EC consumer policy.

Fast forward a decade and we can observe an increase in consumer representation in European institutions promoting the development of a consumer policy. In 1973, a new Environment and Consumer Protection Service (ECPS) was created in the European Commission; the Council of the EC adopted programmes for consumer and information policy in 1975 and 1981; and a raft of consumer protection directives was being developed. Negotiations on these directives stretched over many years, reflecting both the complex regime governing the development of directives and the unanimity requirement in the Council prior to the Single European Act. Finally, the expansion of EC consumer policy went hand in hand with an important shift in the

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legal foundations for its development. In the *Cassis de Dijon* decision in 1979 (C-120/78), the European Court of Justice (ECJ) recognised consumer interests as a potential barrier to EC market integration. The near silence regarding consumers in the EEC Treaty gave way to an explicit recognition of consumer interests in the jurisprudence of the Court (Reich, 1992).

This article examines the role the accession of the UK, with its well-developed consumer institutions and consumer policy, played in the development of consumer policy at the European level. It will show that British accession boosted the development of EC consumer policy first by influencing the 1975 programme for consumer and information policy. Second the accession of the UK, alongside that of Denmark – another country with a strong track record in consumer protection and governance – provided the European Commission with political legitimisation for developing its new consumer policy on the basis of groundwork already laid before 1973. Beyond accession in 1973, British membership in the EC contributed to the eventual prioritisation of an economic model of European consumer citizenship. It can be argued that Margaret Thatcher's notable victory for the Conservatives in the British parliamentary elections in 1979 and the 'neo-liberal turn' launched by her government put an end to competing approaches favouring consumer protection in the EC from a social policy rationale. Last, but not least, this historical examination reveals long term tensions between the UK's preference for market liberalisation and the creation of the common market, on the one hand, and attempts to safeguard national regulation, on the other – tensions which would resonate throughout the UK's membership of the EC/EU and beyond the area of consumer protection.

## 2 | AGENDA SETTING FOR EC CONSUMER POLICY BEFORE UK ACCESSION

In 1975, the Council of the EC adopted the resolution on 'a preliminary programme for consumer protection and information policy' (OJ No C 92). According to the introduction, the meeting of heads of state and government of EC member states and the states joining the EC in Paris, 19–21 October 1972, served as the starting point for the development of EC consumer policy. This reading of the origins of the policy has been repeated in the legal and social science literature (Davies, 2011; Freedman, 2016; Reich, 1992; Weatherill, 2013). A slightly longer-term view challenges this interpretation, however. It is true that the 1972 Paris summit and the declaration by the heads of state and government in particular provided the European Commission with the necessary *political legitimisation* to develop the policy, which only had weak *legal* foundations in the

EEC Treaty. But important groundwork was laid by the Commission before the alleged 'zero hour' of the Paris summit (see also Van Zon, 2020).

The timetable for the development of the foundations of consumer policy was dictated by progress in economic integration between the member states. The customs union was completed in 1968 and the transition period for the Six ended in 1970. Crucially, the impending development of the common market potentially threatened the protection of consumers in the member states. With the end of the transition period, the Treaty articles relating to the free movement of goods became immediately effective; and the European Commission began tackling national legislation preventing the free circulation of goods and services. Article 100 invested the Commission with the power to propose directives for the approximation of laws to the Council. But non-tariff barriers to trade – and this applies to national legislation protecting consumers – often simply consisted of different rules in place for goods and services in different countries; while they might not have been enacted to hinder trade, this was their effect (Leucht, 2018).

Member states were fearful of a 'race to the bottom' on standards and quality in order to open markets. And attempts by the Commission to achieve regulatory convergence by reaching agreement on common standards through the horizontal harmonisation of different national laws were fraught with difficulties. The tensions between the objectives of European market integration, in particular the free movement of goods and services, and consumer protection, have been stressed by Mauro Cappelletti, Monica Seccombe and Joseph Weiler:

Consumer protection ... brings into very sharp relief the dialectics of open borders, protectionism, and bona fide intervention of the Member State to protect legitimate societal values and goals even if at the expense of interrupting the free flow of goods on which the idea of the common marketplace is postulated. To understand the problematics of consumer protection in the common market context is to understand the core issue of European market integration.

(Cappelletti et al. 1986, p. vi)

European Community institutions thus attempted to enhance consumer protection at the European level. In 1968, the Commission began considering consumer interests in the context of developing the common market in goods by establishing a special consumer department in Directorate-General (DG) Competition. 'This specialized service [would represent] the consumer point of view during the discussions leading to directives in the

agricultural and industrial field, in the harmonization of legislation and in other policies such as transport and competition' (European Commission, 1976, p. 3). At least in theory, consumers would need to be considered in a number of policy areas, which required Commission departments with overlapping portfolios to collaborate more closely. In practice, the special consumer department fell short of its aspirations. Composed of only three civil servants, the unit was neither particularly effective, nor influential. As former Commission official Ludwig Krämer (2019, p. 24) reminds us, it 'had no impact on the daily administrative business of the competition department, the Commission or the EEC as a whole'.

The Commission was not alone in starting to acknowledge the significance of consumers in European market integration. From 1969, the European Parliament (EP) also began pushing the Commission to strengthen the special consumer department in DG Competition with a view to reinforcing the position of consumers in the common market (Questions intéressantes des consommateurs, 1972). The German Christian Democrat member of the EP, Hans Edgar Jahn, who was instrumental in the launch of EC environmental policy (Meyer, 2012), even proposed elevating the consumer department in DG competition to the rank of a directorate (Reference to written question, 1972).

An important milestone in setting the agenda for EC consumer policy was the *First Report on Competition Policy*, published by DG Competition in April 1972. The report devoted a separate part to consumers and anticipated the cornerstones of the preliminary programme of 1975, which would be reflected in its heading, namely 'a consumer protection and information policy'. The report also emphasised the potential of the new consumer policy to heighten the appreciation of European citizens to the benefits of EC market integration.

The report shaped the discussion on consumer policy in two important ways, the first of which is that it evoked a blend of an economic and a political model of consumer citizenship. With its emphasis on the benefits of market integration for consumers (European Commission, 1972), the report suggests a close link to the economic model of consumer citizenship, which regards consumers as partners in the economy and an improvement of market mechanisms as the solution to addressing any market imperfections or failures. At the same time, references to income and educational levels (European Commission, 1972), indicate that consumers were not only seen as economic, but also political consumer citizens. In this view, inadequate rights rather than market imperfections constitute a source of problems for consumers (Hilton, 2007, building on Trumbull, 2006). The first approach resonates with what Van Zon (2020) has identified as the 'ordoliberal view' of the consumer, which originated with DG Competition, and the second one with the 'social democratic view', which emerged out of DG Agriculture. Different approaches to

consumer citizenship continued to structure the debate on consumer protection until the 'relaunch' of European integration and the Single European Act (1986) privileged the economic over other models of consumer citizenship.

Second, as in the case of the environment (Meyer, 2017), the EC borrowed from the Council of Europe and the Organization for Economic and Cooperation and Development (OECD) in developing its consumer policy (European Commission, 1972). The OECD had already begun publishing an annual report on consumer policy from 1972, and the consultative assembly of the Council of Europe adopted a 'Consumer Protection Charter' in May 1973 (Bourgoignie & Trubek, 1986). While for the Community, the link between common market creation and consumers became increasingly important with the end of the transition period, parallel – and in part earlier – attempts at fostering consumer protection in the Council of Europe and the OECD indicate that the concerns regarding consumers expressed by DG Competition were shared more widely and outside the narrow boundaries of the Europe of the Six/Nine. Notably, from the early 1970s, consumer policy and law were also advancing in EC member states – both old and new (Frey & Warin, 1974; Lando, 1982).

These multiple attempts at promoting consumer protection at European, international and state level thus represent a response to changes in European societies from the late 1960s. International organisations established in the aftermath of the Second World War, including the EEC and the Council of Europe, focused primarily on the interests of producers who were seen to hold the key to economic recovery and growth; 'thus, the interests of consumers were largely ignored' (Frey & Warin, 1974, p. 1108). What put consumer protection on the agenda of the EC and other international organisations therefore reflected a combination of accelerating technological progress with an increase in mass production, individual purchasing power and the expansion of markets (Frey & Warin, 1974; Reich & Micklitz, 1981).

The contextualisation of the EC's consumer portfolio in a wider framework of international organisations also makes it possible to trace British influence on setting the agenda for the new EC consumer policy before British accession in 1973. Notably, the UK was a founding member of both the OECD (1948/61) and the Council of Europe (1949). The rapporteur on the Council of Europe's Consumer Protection Charter was the longstanding Labour Member of Parliament and former Minister of State at the Board of Trade (1964–68), George Darling. The English politician was particularly interested in improving product information and labelling and in controlling cheap car insurance firms; he championed the cooperative movement and served as president of the Institute of Trading Standards Administration (*Times*, 1985).

Darling referenced the British experience in a debate on the Consumer Protection Charter in the Council of Europe:

I am of course prejudiced in all this. I believe that the British administration of consumer protection is the best and most effective in Europe or North America. After all, I had some ministerial responsibility for some of the legislation. But it would be quite wrong to offer the British system as a model for other countries.

(Council of Europe, 1973, p. 208)

While Darling's statement acknowledges the limitations of transferring British solutions to other countries, it substantiates the role UK politicians, officials and ideas played in shaping the work on consumer protection in the Council of Europe. The UK therefore played an important role *prior* to accession to the EC, through the work of British parliamentarians and officials in other international organisations.

The Council of Europe's Consumer Protection Charter served as an important source of inspiration for the preliminary programme for consumer protection and information policy, developed in the European Commission in 1973. The following section will discuss this influence, while also highlighting the significance of UK accession in providing the Commission with the political legitimacy to develop a new consumer policy in the first place.

### 3 | THE PRELIMINARY PROGRAMME FOR CONSUMER PROTECTION AND INFORMATION POLICY

In the joint declaration by the heads of state and government of EC member states and the states joining the EC issued at the 1972 Paris summit, consumers were introduced under the heading of 'social policy'. The inclusion of consumers under social policy and the emphasis this section placed on ensuring 'the increasing involvement of labour and management in the economic and social decisions of the Community' reflect the social democratic view on consumers that emerged out of DG Agriculture rather than the ordoliberal view developed by DG Competition (Van Zon, 2020). This approach therefore represents a departure from the *First Report on Competition Policy*, which featured a blend of the social democratic and ordoliberal model of consumer citizenship. One purpose of the new programme on social policy should be 'strengthening and coordinating measures of consumer protection' (EU Commission – Working Document, 1972, point 6). Crucially and in contrast to environmental policy, there

was no call for the development of a consumer policy in the joint statement published after the summit.

Instead, the development of a separate consumer policy resulted from the boost the Danish accession provided to the foundational work on consumer policy, which the Commission had been undertaking. The Danish Government prepared a memorandum for the meeting of the Council of Ministers on 23–24 July 1973 which argued that 'within the framework of EC cooperation consumer protection is of such importance that it should be dealt with separately' (Danish Government, 1973). The Danish government proposed that the Commission should develop an action programme for consumer protection, which would be submitted to the Council by the end of the year.

Two aspects of the memorandum underline the good fit of the Danish proposals with the groundwork laid by the Commission. First in line with the Commission's approach, the memorandum promoted the introduction of a consumer view into other fields of EC cooperation. According to the memorandum, these fields included the harmonisation of product standards as well as rules regarding restrictive business practices, product safety and product liability (Danish Government, 1973). This view resonated with the idea of introducing a consumer perspective into EC activities more generally, developed by the Commission through the establishment of the special consumer department in DG Competition. The Danish Government's memorandum also related to the Commission's consumer policy agenda in another way, namely by 'advocat[ing] ... expanded EC action in this field in order to provide tangible results with a practical impact on the daily life of the individual citizen' (Danish Government, 1973). This call mirrored the Commission's *First Report on Competition Policy* in highlighting the potential of consumer policy in making tangible the benefits of European integration for consumers. But, more clearly than the report, the Danish memorandum expressed this sentiment in terms of (consumer) 'citizenship'.

The potential of consumer policy to strengthen the allegiance of Europeans with common market integration and, by the same token, to enhance the legitimacy of the Community and its institutions was widely shared within the EC, also outside the corridors of the European Commission. When the newly established group on environment, health and consumption in the Economic and Social Committee discussed a draft for the preliminary programme in 1974, for example, the group's chair, the Belgian Roger Ramaekers, hailed the promise of the programme to involve Europeans in building the Community:

The Commission programme fulfils a political purpose based on the idea of showing to consumers that Europe in the making is not just the Europe of businessmen.

Perhaps this is the first, if modest, step towards the new model of civilization that the Commission aims to set up.

(Report of the Economic and Social Committee, 1974)

Ramaekers' statement confirms a fresh understanding of the purpose of EC integration no longer focused primarily on the interests of producers.

The decisive period of developing the preliminary programme in the Commission stretched from 25 July to 5 December 1973, when the draft programme was sent to the Council. The British official John Braun remembers having been tasked with preparing the programme, when he joined the newly established ECPS in Brussels in 1973 (Braun, 2010). Braun was a solicitor in private practice and from 1965–73 the Secretary of the UK Advertising Standards Authority (ASA), a self-regulatory body created in 1962 by the advertising industry 'to promote high standards in advertising in the interests of the public' (Aspinall, 1978, in Hilton, 2003, p. 227). In the same year, the advertising industry also published the British Code of Advertising Practice in a move to preempt interference by the Malony Committee on Consumer Protection. This committee examined consumer protection legislation (1959–62) and its work led, for example, to the creation of the Consumer Council and the 1968 Trade Descriptions Act, a law protecting consumers (Hilton, 2003). Braun's role in the ASA evidences that he was involved in the development of British consumer affairs in a decisive period. Most importantly for this article, Braun was moreover a member of the Council of Europe's Working Party on Misleading Advertising, an advisor to George Darling, and he was involved in the Council of Europe's Consumer Protection Charter (EUI, n.d.) His departure from the ASA was acknowledged positively in the body's annual report: 'John Braun OBE who was for 8 years our Secretary now occupies an important position in the EEC at Brussels, and acts as a very useful interpreter to us of Continental trends' (ASA, 1974, p. 7).

Braun and a small group of civil servants working on consumer affairs in the ECPS built on the agenda previously set within the Commission in at least three ways. First, the title of the programme on 'consumer protection and information policy' already featured in the *First Report on Competition Policy*. Second, the preliminary programme transferred 'five basic rights' from the Consumer Protection Charter, approved by the Assembly of the Council of Europe, to the Community: the right to protection of health and safety; the right to protection of economic interests; the right of redress; the right to information and education; and the right of representation (the right to be heard). The five basic rights of the Council of Europe's Consumer Protection Charter reflected US President John F. Kennedy's

1962 special message to Congress, in which the president called for strengthening existing consumer protection and establishing new legislation (European Commission, 1976; Parliamentary Assembly 1973). The direct transfer of the five rights into the Community's preliminary programme is not surprising given John Braun's earlier involvement in the development of the Council of Europe's Charter.

However, in contrast to the Council of Europe's Charter, the preliminary programme prefaced the statement of the five consumer rights with a definition of the consumer: 'The consumer is no longer seen merely as a purchaser and user of goods and services for personal, family or group purposes but also as a person concerned with the various facets of society which may affect him either directly or indirectly as a consumer' (OJ No C 92). This definition and the subsequent emphasis on consumer rights were clearly indebted to the political, or social democratic view of consumers, and continued the approach guiding the social policy section of the 1972 Paris joint declaration. Not only did the social democratic model of consumer citizenship prevail over its ordoliberal rival, but consumer affairs were also institutionally relocated: out of DG Competition and into the new ECPS, which was attached to the vice-president of the Commission (at the time the Italian Carlo Scarascia Mugnozza). Political consumer citizenship, as previously noted, closely reflected the ambition of EC institutions of using consumer policy to strengthen the allegiance of Europeans with common market integration.

The five consumer rights also structured the more detailed discussion of the objectives of the new policy in the Community making up the bulk of the preliminary programme. Again, and this is a third way in which the programme built on earlier agenda setting in the Commission, a number of consumer issues enumerated here were already introduced in the *First Report on Competition Policy*, which in turn referenced the work of both the Council of Europe and the OECD.

Analysing different influences on the preliminary programme, we are confronted with a complex picture. To begin with, there was British influence on the first programme – via the Council of Europe and the work of John Braun on the draft text in 1973. Another decisive input following the first EC enlargement came from the Danish Government by arguing for a separate EC consumer policy. This forceful approach by the Danish social democratic Government mirrored a longstanding prioritisation of consumer affairs in the Danish domestic context (Federspiel, 2019). From its inception in 1947, the Danish umbrella organisation for consumers (*Forebrugerradet*) received governmental funding and promoted and advised on new legislation (Reich & Micklitz, 1981). A key piece of legislation, the Marketing Practices Act of 1972, introduced a Consumer Ombudsman. The Consumer Ombudsman

could initiate action and respond to complaints by consumers or traders falling within the scope of the Act, which targeted economic interests of consumers including the protection from misleading advertising and against unreasonable contract terms. Crucially, it provided consumers with independent administrative access (Hammer Hansen & Gulmann, 1982; Trumbull, 2006). The Act came into force in 1975 indicating that consumer protection made important advances domestically and at the same time as the EC preliminary programme was being developed.

In the UK, too, the early 1970s were a period of significant progress in consumer legislation. The Trade Descriptions Act (1968) already initiated a move towards public regulation by creating a public duty on local authorities to enforce the act. And while initially, the Conservative Heath government was not concerned with consumer protection and in 1970, even abolished the Consumer Council, it soon realised that the consumer vote mattered and backtracked. A Minister for Trade and Consumer Affairs was appointed from 1972, and the Fair Trading Act 1973 led to the appointment of a Director General of Fair Trading (Ramsay, 2019). The act also established an Office of Fair Trading consolidating consumer protection in the UK. A major piece of new legislation, the Consumer Credit Act 1974, imposed a licensing system on traders granting credit and invested the Office of Fair Trading with the power to authorise licences and to investigate applicants and their business associates (Lawson, 1982).

Furthermore, it is anything but straightforward to relate the approaches to consumers of the two new member states to the move from a blend of ordoliberal and social democratic views of consumers to an endorsement of the social democratic view. The UK is regarded as a case in point for the economic model indicating a good fit with the ordoliberal approach. But British activists also promoted a view of consumers as social beings who needed the tools to exercise good citizenship (Hilton, 2007; cf. also Krämer, 2019). In Denmark, in contrast, consumers were viewed as an interest group that bargains with other groups in society to realise their interests. The Danish approach to consumers, described as ‘associational’, is different from both the ordoliberal (economic) and the social democratic (political) view of the consumer (Trumbull, 2006).

As historical scholarship on the EU has confirmed, it is short sighted to conceive of national preferences as cohesive (Kaiser et al. 2009). To the contrary, actors often transferred domestically contested preferences to the European level, where they coalesced transnationally, with likeminded actors from other member states. This is likely what happened in the case of early consumer policy and explains the prevalence of the social democratic approach to consumers. Recalling the early days of the European Consumer Law Group, a group of lawyers with an interest in advancing consumer

policy and law, the Belgian consumer lawyer Thierry Bourgoignie (2019, p. 57) validates this interpretation:

[T]here was quite a consensus among us on the need to empower consumers on the market place, on the need to develop or to promote a social vision of consumer protection policy ... [T]his social dimension of consumer policy was actually promoted and further explored by a lot of academic works.

Bourgoignie continued that one of the proponents of this approach was Iain Ramsay, who ‘published a discussion paper for the UK Office of Fair Trading where he insisted on the social policy rationales for consumer protection’ (Bourgoignie, 2019, p. 57) in 1984.

In conclusion, although the UK Government did not advocate a separate consumer policy as the Danish Government did, British accession mattered. First, it mattered in enhancing the transfer of ideas from other international organisations. The transfer of the five rights, for example, already built on recognition of the work of the Council of Europe and the OECD in the *First Report on Competition Policy*. But instrumental to the transfer was a British civil servant working in the Commission from 1973, who had been involved in drafting the original document in the Council of Europe. The case of John Braun therefore provides a strong personal connection between the different attempts at enhancing consumer protection in international organisations. Second, British accession mattered as the European Commission crucially could – and did – legitimate their interest in advancing EC consumer policy with the accession of a large member state with a well-developed consumer policy (European Commission, 1976, p. 4).

The preliminary programme was adopted by the Council on 14 April 1975, and it provided a political roadmap for developing the new policy. The resulting advances in EC secondary law will be sketched in the following section.

## 4 | THE DEVELOPMENT OF CONSUMER PROTECTION DIRECTIVES

While it borrowed from other international organisations, the EC was in fact in a better starting position for developing a consumer policy than either the Council of Europe or the OECD. On the one hand, this was due to the smaller and somewhat more coherent membership of the Community, bound together by the objective of creating a common market in goods and services. On the other hand, the EEC Treaty provided the Commission with the power to propose directives

for the approximation of laws to the Council. In contrast, in the Council of Europe, for example, it would have been necessary to negotiate and conclude a new set of international conventions, which was not supported by the participant states (Krämer, 2019).

Following the adoption of the 1975 preliminary programme by the Council, the Commission immediately embarked on a number of activities in an attempt to harmonise divergent legislation in the member states. This section focuses on the protection of the economic rights of consumers, the second of the five basic consumer rights, to sketch different influences on the directives addressing the issues of consumer credit, misleading advertising, and product liability, all of which were considered priorities in the 1975 programme (OJ No C 92). Crucially these specific issues, and consumers' economic rights more generally, highlight the challenges the European Commission faced in developing an EC consumer policy, while creating the common market.

Two of the issues of priority – consumer credit and misleading advertising – were also the subject of attention in most EC member states at the time. (European Commission, 1976) According to the memories of former civil servants and experts involved in the development of EC consumer policy and law from the 1970s, different directives were influenced by different legal ideas from the member states. Krämer (2019) and Ramsay (2019) recall that the Commission's proposals for a consumer credit directive were informed by the UK Consumer Credit Act 1974. In the case of the directive addressing misleading advertising the European Commission lifted the concept from German advertising law. The German model proposed some public control of misleading advertising, which was not a good fit with the voluntary self-control model developed by the UK ASA in the 1960s. It was therefore challenged by the UK government, not least in their attempt to appease their powerful advertising industry (Krämer, 2019).

There were also discrepancies between the member states regarding product liability. France, Belgium, Luxembourg and other member states had strict liability through the civil code. Germany had the same for pharmaceuticals (Sheenan, 1982). Conversely, the law of product liability was almost entirely judge-made in the UK. The rule established was that a person injured or suffering loss from a defective product had to demonstrate that someone in the distribution chain – beginning with the manufacturer – had been negligent. If they claimed they were eligible for compensation, the burden of proof was on the injured party (Lawson, 1982). These discrepancies in the law had important consequences for producers and consumers in the member states. For example, if UK products could be sold in France, they would then have to be liable to the strict application of the principle of liability, but

not when the same products were sold in the UK. For French products, this scenario would apply the other way round. While conditions for competition therefore diverged for French and UK producers, consumers in the two member states enjoyed different degrees of protection (Sheenan, 1982). Against this backdrop, the Commission proposed a directive concerning the liability for defective products on 23 July 1976, which was finally adopted by the Council of the EC in 1985 (Council of the European Union, 1985).

How can we explain this delay in reaching political agreement on a directive dealing with a technical issue like product liability – a delay that was representative of other consumer directives, too? First, the case of product liability illustrates just how complex the harmonisation of laws was from the perspective of the member states. It was not simply a question of enhancing the protection of consumers either through improving national legislation or by shifting some responsibility for this to the EC level. Member state governments were faced with competing domestic pressures. In the UK, for example, the British Consumers' Association and the Law Commission promoted developing a system of strict product liability with regard to injury caused by defective products. This was opposed by the Confederation of British Industry and business leaders who argued that a full system of product liability would inhibit innovation and reduce consumer choice (Lawson, 1982). The case of product liability therefore turns upside down the question of the impact of UK accession on EC consumer policy. Here, we see the UK 'awaiting' the outcome of the proposed directive on liability for defective products in order to tackle legislation domestically (Lawson, 1982).

There was a second reason, however, accounting for the protracted negotiations on consumer protection directives. Consumer policy benefited from the momentum provided by the 1975 preliminary programme, but the repeated economic challenges in the latter part of the 1970s did not provide an environment conducive to harmonisation:

The era of neo-protectionism began as Member States sought refuge from unwelcome competition and tried to stem the erosion of industrial and service employment of the workforces. Harmonisation of laws at Community level slid down the scale of priorities and proposals for consumer protection legislation at EEC level were only part of the casualties of undeclared war on the four freedoms of movement of goods, services, capital and people, so fundamental to the construction of Europe and so honoured in the Treaty of Rome.

(Sheenan, 1982, p. 11.6)

The Commission countered protectionism and prioritised the creation of the common market by politicising the legal issues at stake in the 1979 *Cassis de Dijon* judgment in a well-known Communication to the Member States in 1980. The Commission promoted a 'new approach' to the construction of the common market by offering an alternative to relying exclusively on the (lengthy) harmonisation of national laws (Leucht, 2021).

But it was also the *Cassis de Dijon* judgment of 1979, regarded as 'the shining beacon of EU law's image of the consumer even two generations later' (Lezczykiewicz & Weatherill, 2016, p. 3) that reminds us that the commitment to create the common market went hand in hand with an acknowledgment of the boundaries of market integration including the protection of consumer interests at the national level. It is not surprising therefore that member states where consumer protection traditionally enjoyed a high priority were not always keen to transfer responsibility for consumer policy to the EC level. The Danish representatives Jørgen Hammer Hansen and Claus Gulmann argued against strengthening EC consumer policy, for example, when discussing the issue at the 1982 annual meeting of the *Fédération internationale pour le droit européen*, a pan-European association of lawyers created in Brussels in 1961 to promote European integration through law (Hammer Hansen & Gulmann, 1982).

To conclude this section, the directives proposed to strengthen the economic rights of consumers in the Community highlighted the tensions between consumer protection and the creation of the common market. An exception to the complex interplay of legal ideas and political bargaining – between the member states and between different interests within member states – is provided by consumer credit, where the Commission benefited from developments in UK legislation.

## 5 | CONCLUSIONS: THE IMPACT OF UK ACCESSION AND BREXIT'S PAST

This article has explained the timing of the introduction of consumer protection and consumer policy into the European Community. It has emphasised the role of the timetable established by the EEC Treaty, on the one hand, and the wider activities of international organisations and member states in promoting consumer legislation from the late 1960s. A first conclusion therefore is that the timing of the origins of EC consumer policy cannot be understood adequately from a purely intra-Community perspective taking the EEC Treaty as the exclusive source of policy development. Instead, a wider perspective has highlighted the multiple affiliations of member states to different international organisations, and has provided us with a different timeline, which challenges not only the 'zero hour' of the Paris

summit of 1972, but also the 'zero hour' of British accession of 1973.

In this special issue addressing the past, present and future of Brexit, this first conclusion offers some hope for the future of the UK in a wider framework of international collaboration. Despite continuing rhetorical confirmations to the contrary, expressed by the notion of 'taking back control' in the 2016 referendum debate, for example, the UK has not broken its commitment to the post-1945 liberal international order *per se*. It is true that there is a longstanding criticism of the European Convention on Human Rights, most notably and vehemently attacked by Theresa May, first as Home Secretary, and then as Prime Minister. But it is also true that there seems to be no appetite to actually leave the Council of Europe or other international organisations. British civil servants will continue to network, collaborate and negotiate with EU and other civil servants in these organisations. There is therefore also likely to be an ongoing exchange of ideas in different international fora from which the UK may benefit. The historical evidence presented here has demonstrated that the UK, through its affiliation in other international organisations, had wielded some influence on the EC before accession in 1973, which suggests it will do so again. Having said this, in marked difference to the period leading up to UK accession in 1973, the UK no longer wants to join the EU.

A second conclusion builds on the tensions between consumer protection and common market creation. The European Commission stressed the benefits of creating a common market for consumers by promising increased choice and more competitive prices for consumers. At the same time, the objective of common market creation triggered attempts by the Commission to harmonise different national laws hindering the free flow of goods and services. Consumers in the member states were therefore enticed by the advantages of larger and open markets, on the one hand, and threatened by losing nationally protected standards and quality, on the other. So, how can we evaluate British accession in the framework of these tensions? Initially, the European Commission capitalised on the accession of the UK and Denmark to advance the new consumer policy on basis of the groundwork laid before 1972–73. But a more comprehensive answer to this question requires us to move beyond 1973.

From the latter part of the 1970s, the emphasis on consumer protection was challenged both from within the Commission and beyond. First, in February 1979, the ECJ pronounced the *Cassis de Dijon* judgment. While acknowledging consumer interests as a legitimate boundary to common market creation, the notion of mutual recognition provided the Commission with the tool to develop its new approach to creating the Common Market (Leucht, 2021). DG Internal Market which spearheaded the campaign against



protectionism by the member state governments in the Commission was considerably more powerful than the fairly new ECPS. Second, Prime Minister Margaret Thatcher's neoliberal preferences and her support for the single market agenda are well-known and discussed by Stephen Wall in his contribution to this special issue. This ideological drive for the opening of national markets suggests that ultimately, British accession and membership fed into the prioritisation of an economic view of the consumer. Competing attempts to approach consumer protection from a social policy rationale, for example by the European Consumer Law Group, were rendered less significant. This proposition is substantiated by Bourgoignie's (2019) recollection that consumer policy had simply been forgotten in the first draft of the 1985 White Paper on the Completion of the Internal Market.

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