

Regulations on E-Commerce Consumer Protection Rules in China and Europe Compared – Same Same but Different?

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Abstract: This article provides a comprehensive overview of the regulations on e-commerce protection rules in China and the European Union. It starts by giving a general overview of different approaches towards consumer protection in e-commerce. This article then scrutinizes the current legal system in China by mainly focusing on SAIC's "Interim Measures for the Administration of Online Commodity Trading and Relevant Service Activities". The subsequent chapter covers the supervision of consumer protection in e-commerce in China, which covers both the regulatory objects of online commodity trading and the applied regulatory mechanisms. While the regulatory objects include operating agents, operating objects, operating behavior, electronic contracts, intellectual property and consumer protection, the regulatory mechanisms for e-commerce in China combines market mechanism and industry self-discipline under the government's administrative regulation. Further, this article examines the current European legal system in online commodity trading. It outlines the aim and the scope of EU legislation in the respective field. Subsequently, the paper describes the European approach

towards the supervision of consumer protection in e-commerce. As there is no central EU agency for consumer protection in e-commerce transactions, the EU stipulates a framework for Member States' institutions, thereby creating a European supervisory network of Member States' institutions and empowers private consumer organisations to supervise the market on their behalf. Moreover, the EU encourages the industry to self- or co-regulate e-commerce by providing incentives. Consequently, this article concludes that consumer protection may be achieved by different means and different systems. However, even though at first glance the Chinese and the European system appear to differ substantially, a closer look reveals tendencies of convergence between the two systems.

Keywords: Chinese and European rules on e-commerce consumer protection, online commodity trading, supervision, regulatory objects, regulatory mechanisms, market surveillance, industry's self- and co-regulation, private consumer organisations, e-commerce, China, EU, consumer protection

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I. Introduction¹

- 1 As a consequence of the commercialization of the Internet, the world of the consumer has experienced a fundamental change.² The ubiquity of the Internet involves several advantages with regard to the availability of markets. The Internet allows consumers and entrepreneurs to conclude contracts for the exchange of goods and services worldwide without leaving their computers at home.

- 2 The features that specify online-trading from regular trades materialize in three areas: information flow, cash flow and commodity flow. Information flow represents the means of trading, cash flow provides the conditions for trading, and commodity flow is the result of the trading process. There are three factors that make e-commerce unique:

– **Virtuality:** E-commerce is carried out in a virtual online environment where the buyer and seller do not engage in face-to-face contact. Instead, consumers use a computer to obtain information about sellers, the products and services they offer, terms and pricing.³

– **Unboundedness:** As the Internet has no physical boundaries, online transactions can be performed wherever an Internet connection is available. For consumers this means that shopping on the Internet is not constrained by time or space, lowering the financial costs of searching for products and services as well as saving time and energy. For online traders this means that they are also not constrained by time or space.

– **Multiplicity** of actors involved: A number of actors in addition to the consumer and the seller are involved in the e-commerce trading process to ensure verification.⁴

An e-commerce trading process comprises of three main stages: pre-contractual, contractual process and post-contractual. Each of these stages carries with it certain risks for consumers:

– **Pre-contractual stage:** Consumers might be misled about the identity of the trader, the products and services offered, and/or terms and pricing. He might also be subject to a lack of information on availability of offers.⁵

– **Contractual stage:** Consumers face irregularities related to contract terms such as missing information or use of pre-checked boxes (e.g. for insurances). Especially problems of consent evolve at the contractual stage: Personal information may be exposed and consumer behaviour may be tracked without the knowledge or consent of the consumer.⁶

– **Post-contractual stage:** Products or services might not be delivered, or may be damaged in the transportation process, delivered products or services, may not be as wanted, sellers may deal with complaints in an unsatisfactory manner, consumers may face challenges to return goods.

- 3 In response to the fact that the e-commerce markets between Europe and China is increasingly intertwined, German and Chinese experts worked together to conduct a comparative study on the regulation on consumer protection in the e-commerce markets in both regimes that seek to face exactly these challenges. This piece summarizes and evaluates the findings of the study. For further information, please consult the study published with Beck/Hart/Nomos⁷.

II. Approaches to Consumer Protection in E-Commerce

- 4 Although these challenges are specific to e-commerce regulation, the Internet does not fall short of possibilities to regulate.⁸ Rather, innovative and flexible measures are needed to achieve the respective goals. To address the risks outlined above, a number of instruments may be applied:⁹

- ▶ government regulation, supervision and enforcement,
- ▶ self-, or co-regulation,
- ▶ technology,
- ▶ prudent behaviour,
- ▶ market surveillance.

- 5 Key regulations address, inter alia,

- ▶ licensing, information duties, misleading advertising, duties of platform operators (pre-contractual);
- ▶ conclusion of contract, form, contract terms, burden of proof (contractual process);
- ▶ remedies, the right to withdrawal, data protection (post-contractual).

- 6 Furthermore, in order to be effective, compliance with regulation is a major issue. This especially applies in the area of e-commerce, where regulation can barely keep pace with the fast developing e-technology.¹⁰ Businesses and their associations may engage in self-regulation. These schemes have their own rules and methods for monitoring conduct. Technology, such as encryption, can be employed to reduce risks in the payment system. In principle, technology can be prescribed by law-ma-

kers, through schemes, or selected by individual actors. In practice, it is most often agreed to at the scheme-level, or evolves in an uncoordinated fashion at the market-level. The introduction of the Payment Card Industry Data Security Standard (PCI DSS) is an example of scheme-level decision-making whereas the common use of Secure Sockets Layer (SSL) is an example of the uncoordinated, 'spontaneous' adoption of a standard.

- 7 Finally, even elaborate rules and highly sophisticated technologies are insufficient if consumers do not behave prudently. If consumers are not aware of the risks posed when conducting transactions on the Internet, including the risks when simply using the Internet to send and receive emails, little can be done to make the Internet and Internet payments safe. Therefore, one important precondition for secure Internet payments is consumer education. Consumers have to be educated on the use of technical devices and the application of common sense when dealing on the Internet. Furthermore, they need to be aware of their rights and responsibilities and where to turn to when they need assistance.

III. The Legal System of Consumer Protection Rules in E-Commerce in China

- 8 In the initial stage of e-commerce legislation, legal norms at national level were established for regulation of infrastructure, information services, administration of domain name, etc., which laid the legal ground for the development of e-commerce. However, the effectiveness and security during online trading were less attended to, let alone consumer protection in e-commerce. At present, the laws and regulations on physical transaction still serve as the legal basis for litigation involving infringement of the rights of online consumers.¹¹
- 9 Since the beginning of the 21st Century, the legal framework regarding e-commerce has gradually been elaborated. Additionally, the e-commerce trade associations have developed self-regulatory norms, which help to enhance the legal situation considerably.¹² However, China's online commodity trading still lacks a comprehensive body of legislation at present. Furthermore, the protection of online consumers' rights has to be improved.

1. Regulation on Consumer Protection in E-Commerce in China

- 10 On national level, the State Council adopted the Law on the Protection of the Rights and Interests of Consumers (hereafter Consumer Code) in the year of

1993.¹³ The Consumer Code is the main legal basis for consumer protection in China. Further consumer protection rights are provided by additional acts and regulations, including acts on responsibilities for product quality such as the Contract Act (1999)¹⁴, Product Quality Act (2000)¹⁵ and Drug Administration Act (2001)¹⁶; acts on price supervision such as the Standardization Act (1989)¹⁷ and Price Act (1998)¹⁸; acts on market order such as the Act against Unfair Competition (1993)¹⁹, Advertising Act (1995)²⁰ and Trademark Act (2001)²¹. Moreover, the State Council and other competent authorities have stipulated specific measures to implement the Consumer Code.²² The majority of these measures applies to online trading and provides the basis for the fundamental legal guarantees on the protection of consumers' rights.

- 11 China's central market supervisory authority, the State Administration for Industry and Commerce (SAIC) issued the Interim Measures for the Administration of Online Commodity Trading and Relevant Service Activities²³ (hereafter: Measures), which took effect on 1 July 2010, since when online trading formally fell in the jurisdiction of SAIC in terms of market supervision. The Measures aim to safeguard market order in online commodity trading, to regulate behaviour in online commodity trading as well as its relevant services, to guarantee the legitimate rights and interests of both the consumers and the business operators in online trading and to promote the sustained healthy development of the cyber economy.
- 12 In the Measures, the real-name registration system represents one of the key elements for consumer protection in e-commerce, which will contribute to the establishment of credit evaluation and disclosure systems as well as risk warning. Furthermore, the Measures stress that the principle of equity shall be reflected and respected in electronic contracts provided by online business operator of commodities and services and consumers must be pointed at contract clauses of their most concern in a reasonable and a clear manner. Moreover, a receipt for goods or services, as an evidence of transaction, shall be issued by the business operator at the consumer's request. In addition, the Measures highlight the importance of protecting the consumer's privacy and information security. To this end, online commodity operators or service providers are obliged to safeguard collected information, to make fair use of it, keep it on file only for a given time period and delete it in an appropriate manner. It is not allowed to collect any information that is of no relevance to the provision of goods and services. Unless otherwise prescribed by applicable laws and regulations, such information should not be used improperly, published, rented or sold in any circumstances. A consolidated view indicates that the Measures success-

fully address the issue of the management of online trading platform, and contribute to the protection of rights and interests of online consumers.

- 13 Despite the fact that the Measures partially solved the problems of managing online trading platforms and thus improved the protection of consumers' rights and interests, there are still a lot of consumer protection problems which are lacking proper solutions. In particular, online traders committing breach of contract, delivery of other products than those ordered due to forged product descriptions and images, delayed refund of purchase prices or transportation costs and low standards of product warranties indicate that the Chinese laws on consumer protection in the field of e-commerce are still inadequate and need further improvement.
- 14 Currently, there is no particular Chinese law which exclusively deals with consumer protection in e-commerce, but generally, the Consumer Code applies. The same applies to the respective acts on business transactions which were initially designed to deal with "non-virtual" contracts. Due to the specific circumstances in online trading, certain problems regarding consumer protection in e-commerce remain unsolved. This indicates that further improvements in this area need to be made.

2. Supervision of Consumer Protection in E-Commerce in China

- 15 In China, e-commerce is primarily supervised by the government authorities, while trade associations and public media also play important roles in supervision, significant complement to governmental regulation. However, in a society with a sound legal system and well performing market mechanisms, enterprises, consumers and communities shall predominantly assume the major responsibility.

a.) Regulatory Objects of Online Commodity Trading

- 16 The Chinese regulatory system of online commodity trading shall ensure rational and effective supervision of certain regulatory objects. These objects basically include operating agents, operating objects, operating behavior, electronic contracts, intellectual property and consumer protection.

(1) Operating Agents

- 17 China implements a licensing system for operating agents engaging in online commodity trading. According to the Measures, the State shall implement a licensing system for-profit Internet information

services and a record filing system for not-for-profit Internet information services. Furthermore operating agents engaging in for-profit Internet information services must obtain a permit for operating a value-added telecommunications business in the form of Internet information services and a business license to engage in online commodity trading in China. As online commodity trading covers a wide range of business fields, an operator, having obtained a business licence, is required to run his business only within the approved business scope, according to the law.

(2) Operating Objects

- 18 Goods and services that need special approval must be examined and approved by the competent administrative departments. Online operating activities can only be conducted, if the operating agent is granted a corresponding trade licence. The competent departments in charge of examining and approving should monitor and administer Internet information content according to their respective duties and responsibilities under law.

(3) Operating Behaviour

- 19 Serious competition violations and other illicit acts have not been rare in the course of the development of China's online commodity trading.²⁴ Thus, China's regulatory attention is focused on issues, such as cybersquatting, infringement of the exclusive right to use brands or trademarks, operating an online commodity (or service) business without approval, selling franchised goods and services without permission, using e-commerce to sell counterfeit, fake or smuggled goods, violating the market competition order of online commodity trading in the after-sale stage.

(4) Electronic Contracts

- 20 The Chinese Contract Law provides specific provisions on aspects of electronic contracts regarding subjects, form, forming conditions, jurisdiction and the legal status of digital signatures.²⁵ The main issues arising from an electronic contract in online commodity transactions in China include contract fraud and incomplete or non-performance of contract terms.

(5) Intellectual Property

- 21 Infringements in China's online commodity trading mainly include violations of rights. Typical violations are as follows:

1. infringement of patent, author's rights and copyright (for instance, Wanfang Data Co., Ltd repeatedly made Masters or Ph.D. dissertations available for commercial use in its electronic dissertation database without authorization; this act prompted several cases of copyright infringement litigation. As the court ruled that Wanfang Data Co., Ltd committed infringements, the defendant was required to compensate the authors);
2. infringement of website names (for example, mimicking or piracy of the name or web pages of other sites);
3. infringement of Chinese domain names (for examples, mala fide registration of Chinese domain names of well-known enterprises, old brands or trademarks).

(6) Consumer Protection

- 22 As already mentioned above, the protection of consumer's rights and interests mainly concerns the protection of personal data of consumers, which requires that the online commodity operator and online service provider should follow the four principles of information safeguard, fair use, given time limit and appropriate disposal.

b.) Regulatory Mechanisms

- 23 Based on legal norms, the regulatory mechanism for e-commerce in China combines market mechanism and industry self-discipline under the government's administrative regulation.

(1) Legal Supervision

- 24 Over the past decade, China has issued thirty laws concerning the regulation of the Internet, which deal with commerce, taxation, information, network, payment, security, logistics and protection of consumer rights. The continuous improvement of relevant legislation by the National People's Congress and its Standing Committee lays the prerequisite for effective legal supervision. However, the present legal situation does not meet the needs of regulatory practices. For example, it is difficult for consumers to receive compensation from online business operators for personal or property damages. First, online business operators often conceal their actual addresses intentionally or unintentionally, which makes it difficult to locate them. Second, they easily evade their responsibilities because of other parties involved in online transactions including electronic payment services, online trading platforms and logistics companies. Finally, due to the wide coverage of

online transactions and the multiple parties involved, it is difficult to define which party shall be held liable for return and exchange costs.

(2) Administrative Supervision

- 25 In China, administrative regulation represents one of the primary regulatory methods for online commodity trading, which is implemented by twelve government departments throughout the whole process of online commodity trading. Administrative regulation in the pre-trading stage includes: market access permits for business entity, quality controls on commodities, regulation of Internet advertisement, and protection of intellectual property rights. Administrative regulation in the trading stage mainly focuses on the monitoring of electronic contracts and consumer rights protection. Post-trade administrative regulation attends to the following two areas: monitoring of the fulfilment of post-sale customer services and supervision of logistics. The Measures, which represent the first administrative regulation aiming to develop and regulate online commodity trading and related services, play a crucial role in the regulation of China's online commodity trading.
- 26 However, the administrative supervision of online commodity trading faces numerous problems. For instance, supervision enforcement officers often lack the occupational skills needed to deal with illicit online trading activities, as they often cannot handle modern IT technologies properly and do not possess sufficient knowledge of the online market. Furthermore, the IT equipment often does not meet the highly sophisticated technical needs required for an efficient supervision.
- 27 Due to China's decentralized market supervisory system, the cross-border coordination between the local AICs is at a rather low-level. For example, the AICs' information systems solely cover business entities at the provincial level. Thus, it is difficult for the AICs to supervise online commodity traders which are registered in another province. Beyond that the supervisory scope of AICs is mainly limited to the registration of online business entities and online advertising, while the supervisory capacities with regards to other forms of illegal online activities, such as online fraud, violations of intellectual property rights and online business operations without licence, are weakly developed.
- 28 Further, practice has shown that the supervision of post-sale customer services is particularly insufficient. This frequently applies to services such as the return of products, technical support, installation and repair guarantees. Consumers are often hampered to use these services, as it is impossible to identify the original seller or the seller does not

comply with the service commitments. Thus, AICs need to intensify their supervision efforts on post-sale online trading services.

(3) Market Mechanism

- 29 In China, market power is manifested in the dynamics between providers, consumers, and provider-consumer relationships. A fair competitive environment will be encouraged by both providers and consumers in order to achieve development through competition and the protection of rights. Both providers and consumers will monitor each other's trading activities, and report to authorities in the case of illegal trading. Providers and consumers will also monitor each other's actions in the process of trading in order to protect their own rights.

(4) Other Regulatory instruments

- 30 Trade association²⁶ and public media supervision are important complement to governmental regulation. Trade associations can utilize mechanisms of self-discipline and self-regulation,²⁷ while public media can monitor the effectiveness and efficiency of regulatory efforts by legal means, administrative means and trade associations. However, the Chinese Internet trade associations are still in an immature stage, and so are their efforts to self-regulation. Some trade associations have even imposed measures to protect their interests under the guise of 'self-regulation'.

IV. The Legal System of Consumer Protection Rules in E-Commerce in the EU

- 31 Consumer sales protection in European e-commerce is mainly regulated in contract law through Directive 97/7/EC on the Protection of Consumers in respect of Distance Contracts.²⁸ In addition, some provisions of Directive 2000/31/EC on e-commerce²⁹ are applicable. Both need to be viewed in light of the general Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees.³⁰
- 32 The European Commission has reviewed both 97/7/EC and Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. In the meantime, the European Council and Parliament have adopted a proposal for a Directive on Consumer Rights which merges the existing EU consumer directives on E-commerce with the doorstep-selling Directive, which is expected to enter into force approximately at the end of this year.³¹

1. Regulation on Consumer Protection in E-Commerce in the EU

- 33 The aim of EU legislation in the field of distance selling is to put consumers who purchase goods or services through distance communication means – such as the use of the Internet (e-commerce) – in principle in a similar position to consumers who buy goods or services in resident shops. Directive 97/7/EC provides a number of fundamental legal rights for consumers in order to ensure a high level of consumer protection throughout the EU.
- 34 Generally, Directive 97/7/EC in respect of distance contracts applies to all consumer distance contracts made under the law of an EU-Member State. In this respect 'distance contract' means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded.³²
- 35 Some types of contracts are excluded from all the provisions of the Directive, for instance, all B2B and C2C contracts, contracts concluded via automated vending machines or automated commercial premises, contracts for financial services and contracts concluded through a public auction.³³ However, online auctions as they are exercised inter alia on eBay usually do not fulfil this requirement and are therefore principally within the scope of Directive 97/7/EC. Other exempted areas such as financial services do also not fall short of regulation, as special regimes such as Directive 2002/65/EC concerning the distance marketing of consumer financial services³⁴ (Fn. einfügen: OJ L 271, 9.10.2002, pp. 16-24.) apply.
- 36 Other types of contracts are excluded from the core provisions of the Directive, such as the provision of comprehensive information before the purchase and the right to cancel the contract. These include contracts for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home of the consumer, to his residence or to his workplace by regular roundsmen.³⁵ The same limitation applies for services to be performed on a specific date or within a specific period such as contracts for the provision of accommodation, transport, catering or leisure services,³⁶ as most of these contracts are already protected by special regulations such as Directive 90/314/EEC on package travel, package holidays and package tours.³⁷

2. Supervision of Consumer Protection in E-Commerce in the EU

- 37 In the EU, there is no central agency for consumer protection in e-commerce transactions. Instead the EU stipulates a framework for Member States' institutions, thereby creating a European supervisory network of Member States' supervisory institutions³⁸ and empowers private consumer organisations to supervise the market on the consumer's behalf.³⁹ Moreover, the EU encourages the industry to self- or co-regulate e-commerce by providing incentives.

a.) EU Market Surveillance of Consumer Protection in E-Commerce

- 38 Although there are several agencies at the European level carrying out market surveillance activities regarding a number of market regimes, such as pharmaceuticals, chemicals and foodstuffs,⁴⁰ no general agency at European level deals with market surveillance of e-commerce transactions. Rather, these sector-specific agencies occasionally conduct market surveillance of consumer protection in e-commerce within their legal mandate to supervise the European market. They mainly do so by issuing warnings, for example, to refrain from buying counterfeit medicines over the Internet. Despite the fact that EU generally tends to increase the number of market areas which are supervised by EU agencies,⁴¹ there are no plans to establish an agency that monitors consumer protection in e-commerce.
- 39 Within the field of consumer protection in e-commerce, there are only a few provisions which form a regulatory framework for Member States to carry out market surveillance. Some of these frameworks rather provide general rules and principles, which leave a margin to Member States how to conduct market surveillance activities; others only give little scope to Member States for discretionary actions. However, each of these regulations target Member State regulation towards specific addressees. With respect to Member States' institutions, EU law frames the set-up of Member State regulatory authorities⁴² and their investigation and enforcement powers.
- 40 In order to foster coordination in the area of e-commerce, the EU Commission established in Regulation (EC) 2006/2004 on Consumer Protection Cooperation⁴³ network regulations for authorities, which are responsible for enforcement in the Member States.⁴⁴ The Regulation lays down the framework and general conditions under which these authorities must cooperate. With respect to the special area of e-commerce, the Commission established the ad-

visory body 'European Regulators Group for Electronic Communications Networks and Services' in Decision 2010/299/EU⁴⁵. According to para. 2 of this decision, its main responsibility is to make a 'contribution towards consistent regulatory practice by facilitating cooperation between national regulatory authorities (NRA's) and between NRAs and the Commission and by providing an interface for advising and assisting the Commission in the electronic communications field.'

b.) Consumer Organisations in Market Surveillance

- 41 In EU law, private consumer organizations play a major role in the market surveillance of all kinds of consumer protection rules. According to Art. 7(2) of Directive 93/13/EEC, Member States shall provide 'provisions whereby persons or organizations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms.' Hence, with regard to unfair contractual terms in e-commerce, Member State consumer organizations must be granted a standing in civil proceedings in order to facilitate judicial control of general terms and conditions. According to Art. 3(b) Directive 98/27/EC⁴⁶, consumer organizations may even be granted a special *locus standi* according to injunction procedures in matters of collective consumer protection.
- 42 This broadly defined task assignment results from the fact that the individual rights approach in consumer protection faces serious problems when applied in reality. Breaches of consumer protection law, if viewed individually, regularly cause slight damage only. As these losses generally fail to outweigh the risks involved in litigation, consumers tend not to enforce their rights in court procedures. However, if viewed in total, the damages caused by breaches of consumer protection rights have a huge negative impact on the common market as a whole – both financially and as regards to the consumers' trust in e-commerce. In order to cope with this problem, the European Commission assigns independent private parties, such as consumer organizations, with the task to claim the consumer's rights on their behalf.

c.) Self- and Co-regulation

- 43 The EU adopts innovative regulatory methods, such as self- and co-regulation by the parties concerned, in order to keep pace with the highly technical is-

sues involved in e-commerce as a rapidly developing industry.

- 44 EU legislation for example fosters industry self-regulation by providing financial help to facilitate the establishment of certain self-regulation organizations. The most prominent example is the Euro-Label-Organisation⁴⁷ which acts as an umbrella organization for several national organizations. It sets standards and monitors compliance in collaboration with national organizations.
- 45 Following the 'new approach'⁴⁸, private standardization organizations are entitled to develop standards in e-commerce. According to Art. 17 Framework Directive 2002/21/EC⁴⁹ the European Committee for Standardisation (hereafter CEN), the European Committee for Electrotechnical Standardisation (hereafter CENELEC), and the European Telecommunications Standards Institute (hereafter ETSI) are authorised to develop standards for electronic communications networks, electronic communications services and associated facilities and services upon request of the Commission. Each of these Committees are private organizations, whose set-up, organization and structure are, however, subject to European regulation.
- 46 Furthermore, the EU also supports the introduction of codes of conduct for the respective industries. Indeed, several codes of conduct are currently in use in European e-commerce. Several trade associations such as the Federation of European Direct and Interactive Marketing⁴⁹ or the European E-commerce and Mail Order Trade Association⁵⁰ provide such codes.

V. Comparison and Conclusion

- 47 As the comparative analysis has shown, consumer protection may be achieved by different means and different systems. However, even though at first glance the Chinese and the European system appear to differ substantially, a closer look reveals tendencies of convergence between the two systems. In Europe, the problems of enforcement and of ensuring consumer protection are acknowledged in practice, thus leading to a hybrid approach of private enforcement and state-based supervision of markets, in combination with making use of competition (market) forces. State authorities, as well as empowered associations, monitor misbehaviour in markets in order to protect weaker parties. Deficits in enforcement still have to be admitted, thus leading to initiatives to establish collective actions or to give more power to state authorities. On the other hand, China has qualified consumer protection as a state policy which cannot be left to individual enforcement as market inefficiencies may lead to unwanted mistrust by consumers and underdevelopment of markets and production. Neverthel-

ess, individual enforcement and supervision by associations has been enhanced in recent years so that it is fair to say that some European elements of private enforcement may also be identified in the Chinese system. The European system, which strongly emphasized private market regulation, increasingly acknowledges a need for governmental supervision. This supervision, however, resembles not so much in traditional top-down regulation but in network governance models and incentives approaches. China, which emphasized state supervision, increasingly recognizes private regulatory mechanisms to govern the e-commerce market. In this respect, both regimes, despite many differences in detail, indeed come closer.

- 1 The authors would like to thank their research colleagues that were involved in drafting the comparative study on e-commerce regulation in China, Germany and Europe Ala Musi, He Mingke, Li Anyu, Malte Krüger, Hans-Wolfgang Micklitz, Gerald Spindler, and Christian Thorun. This article bases also on their work. The study was published at GIZ/SAIC/CSAIC (eds), *E-Commerce in China and Germany: A Comparative Sino-German Analysis*, Beck/Hart/Nomos, 2011.
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- 13 Law of the People's Republic of China on Protection of the Rights and Interests of Consumers, English text available at <http://www.lawinfochina.com/Display.aspx?lib=law&ID=6137>.
- 14 Contract Law of the People's Republic of China, English text available at <http://www.lawinfochina.com/Display.aspx?lib=law&ID=6145>.
- 15 Product Quality Law of the People's Republic of China, the English text available at <http://www.lawinfochina.com/Display.aspx?lib=law&ID=1834>.
- 16 Pharmaceutical Administration Law of the People's Republic of China, English text available at <http://www.lawinfochina.com/Display.aspx?lib=law&ID=1832>.
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- 18 Price Law of the People's Republic of China, English text available at <http://www.lawinfochina.com/Display.aspx?lib=law&ID=76>.
- 19 Anti-Unfair Competition Law of the People's Republic of China, English text available at <http://www.lawinfochina.com/Display.aspx?lib=law&ID=648>.
- 20 Advertising Law of the People's Republic of China, English text available at <http://www.lawinfochina.com/Display.aspx?lib=law&ID=430>.
- 21 Trademark Law of the People's Republic of China, English text available at <http://www.lawinfochina.com/Display.aspx?lib=law&ID=2107>.
- 22 For example the Guiding Opinions of the Ministry of Commerce on Promoting the Healthy Growth of Online Shopping and the Administrative Measures for the Payment Services Provided by Non-financial Institutions promulgated by PBC.
- 23 See for English text available at <http://www.lawinfochina.com/Display.aspx?lib=law&ID=8133>.
- 24 See Qiu Yewei, Research on Trust in Electronic Business and Its Mechanism Construction, Tribune of Political Science and Law, 2008, pp. 165 et seqq.
- 25 See §§ 11, 16, 26, 34, 36 Contract Act.
- 26 For example, China Electronic Commerce Association (CECA), Internet Society of China (ISC), China Association of Small and Medium Enterprises (CASME).
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- 28 OJ L 144, 4.6.1997, pp. 19-27.
- 29 OJ L 178, 8.6.2000, pp. 1-16.
- 30 OJ L 171, 7.7.1999, pp. 12-16.
- 31 Up-to-date evaluations of the Directive are still missing. See for a review of the first proposal Peter Rott, The Proposal for a Directive on Consumer Rights: No Single Set of Rules, Zeitschrift für Europäisches Privatrecht 2009, pp. 456-488.
- 32 Art. 2 (1) Directive 97/7/EC.
- 33 Art. 3 no. 1 Directive 97/7/EC.
- 34 OJ L 271, 9.10.2002, pp. 16-24.
- 35 Art. 3 no. 2 1st Directive 97/7/EC.
- 36 Art. 3 no. 2 2nd Directive 97/7/EC.
- 37 OJ L 158, 23.6.1990 pp. 59-64.
- 38 See e.g., Art. 3 Framework Directive 2002/21/EC, OJ L 188, 7.3.2002, pp. 33 et seq.
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- 40 K. Purnhagen, Competition of Agencies in European Pharmaceutical Law – Does It Exist, Is It Desirable and How to Handle It?, 1 EJRR 2010, pp. 227 et seqq.
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- 44 See generally on the underlying theory of network governance Keith Provan and Patrick Kenis, Modes of Network Governance: Structure, Management, and Effectiveness, 18 J Public Adm. Res Theory, 2008, pp. 229 et seqq.
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- 50 See for their codes of practice their website, <http://www.fedma.org/index.php?id=56>.
- 51 See for their codes of practice their website, <http://www.emota.eu/consumer-trust/self-regulation.html>.