
Overview

Title:

Comparative legal research on consumer legislation in the digital society

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● Abstract

As society becomes increasingly digitalized, the number of consumer transactions related to digital content and digital services is increasing, but it is not clear what rules apply in the event of a consumer problem. In addition, new issues have arisen regarding not payments, but the treatment and protection of personal data provided by consumers for the provision of digital content or digital services.

In this context, this study focuses on the transposition in Germany and France of the Digital Content Directive (Directive (EU) 2019/770) and the Sale of Goods Directive (Directive (EU) 2019/771), which were enacted in 2019 in the EU, and on the status of regulation in the UK and the US. A literature review and interviews with international experts were conducted, focusing mainly on contractual compliance with respect to digital content and digital services and the provision and protection of consumers' personal data. In this overview, the following are excerpts from our discussion of the legal and regulatory considerations in Japan.

[Contractual compliance]

The Digital Content Directive and the Sale of Goods Directive strengthen consumer protection by setting provisions for both subjective requirements for contractual compliance and for objective requirements that must be met in addition to the subjective requirements, as well as tightening the requirements for agreements regarding any exceptions below the objective requirements. There is comparable regulation in the US and the UK regarding subjective and objective compliance requirements. In this regard, establishing regulations attached to objective standards may enhance consumer protection, even in Japan, which generally places emphasis on subjective concepts (transactional agreements).

Another interesting point is that France, while providing a statutory warranty of compliance under the Consumer Code, leaves room for consumers to seek relief by invoking the provisions of liability for defects under the Civil Code, which provides more extensive consumer protection. The EU is also unique in imposing an obligation to make updates to maintain contractual compliance.

[Provision and protection of personal data]

In the EU, the GDPR, a fundamental rights-level constitutional provision, is the first line of protection for personal information. Then, it recognizes the substantial value of data provided by individuals when using digital content and services without payment, and provides contractual protection for such data. The GDPR also provides for the right to withdraw consent regarding personal data, but it is left to member states to decide whether this withdrawal applies to “contracts in which the consumer provides only personal data.” In Germany, consumer protection is also provided by making such cases subject to the consumer contract provisions of the Civil Code (BGB). Thus, we believe that if Japan were also to treat transactions in which consumers provide personal data as contracts for value, consumer protection can be achieved, and that adding contractual protection will provide a higher level of protection for personal data. Another possible way to increase the effectiveness of consumer protection would be to introduce provisions into consumer law that would apply to cases in which personal information is provided.