

From Information Overflow to Incapacitation: Comparing German and Japanese Consumer Protection

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I. INTRODUCTION

This article on consumer protection deals with private companies as addressees of legal regulations, concerning their duty of information about products, services and related contractual terms. Comparing German and Japanese approaches, it concentrates on the role of information on the one hand as a means to protect the interests of consumers, but on the other hand as more and more infringing on the self-responsibility of consumers.

The elaboration proceeds in four steps:

- a. Risk perception: What kinds of risks are perceived? In other words, in what way are consumers threatened and why are they especially prone to be injured? (II.)
- b. Consumer protection: How can consumers be protected? The general idea of consumer protection is viewed, along with its development in Germany and Japan and the measures usually employed. (III.)
- c. Information: The article then centers on information of consumers as one particular measure. Its function, the duty to inform and the areas generally covered will be looked upon. (IV.)
- d. Critical assessment: Finally, the concept of information undergoes a critical analysis, accompanied by a close look at the image of consumers as it emerges from the regulations described before. Some suggestions are given (V.).

II. RISK PERCEPTION

1. *Perceived Risks*

Risks for consumers may occur in many places and they may take on several forms. It is virtually impossible to give a full account, but three “main risks” can be discerned.

a. *Dangerous Goods and Products*

The most “classic” cases are dangerous goods and products. These include chiefly material objects that are in some way unsafe and thus can damage other goods and even may cause bodily harm. This includes, for example, a car with malfunctioning seatbelts or a hairdryer that is not sufficiently insulated, as well as a stereo or a soft drink can with too sharp edges.

b. *Misunderstanding or Deception Concerning Goods and Services*

On a lower level – threatening a consumer’s pocketbook rather than his life – one finds mistakable or even deceptive descriptions of goods and services. Here risks usually arise in connection with advertising and commercials for certain products, making consumers believe that they receive something better, cheaper or simply different from what they opted for. Examples are a disappointingly simple holiday resort, an expensive plasma television set where not only monthly installments have to be paid but also a substantial advance payment is due, or a built-in kitchen that contrary to expectation does not contain any electrical appliances.

c. *Disadvantageous Contract Terms*

Mainly in consumer credit transactions, but also in long-term agreements concerning services like mobile phones or Internet access, consumers may be financially damaged by unilaterally disadvantageous contract terms. In addition, these are often very difficult to understand for non-professionals. For instance, credit agreements may contain painfully high interest rates or over-strict repayment schemes, while other service contracts sometimes have very long running periods without proper means to cancel them or with limits on the use of the respective service to certain times or places.

2. *Inherent Aggravating Factors*

In addition to particular risks, an ever-present inherent aggravating factor must not be forgotten: In their relationship toward companies, consumers find themselves in a structurally weak position.¹ This handicap has several reasons.²

1 M. DERNAUER, *Verbraucherschutz und Vertragsfreiheit im japanischen Recht* (2006) 64.

2 Cf. E. VON HIPPEL, *Verbraucherschutz* (3rd edition, 1986) 3 et seq.

a. Lesser Bargaining Power Compared to Companies

Consumers are fitted with far less bargaining power than most companies they buy products from. This means that they almost never will be in a situation where they can influence the terms of trade. Take it or leave it, they have to accept the goods or services offered. All they can do is to switch to another shop or provider if that is possible.

b. Increasingly Complex Market Makes Decisions Difficult

Nevertheless, here also are limits. In an increasingly complex and globalized market, comparing different offers has become very difficult. There are so many apparently similar products and suppliers to choose from that a normal customer with an inevitably low knowledge level hardly can make purchase decisions on a sound factual basis.

c. Decrease in Personal Advice

The difficulty in comparing different products is further exacerbated by the fact that personal advice to customers is getting scarcer and scarcer. On the one hand this stems from the shift in purchase behavior away from the traditional small shops with trained-on-the-job attendants to self service in huge chain stores and an ever increasing amount of distance sales or purchases via the Internet. On the other hand, cost cutting by way of reducing staff has been especially severe in the area of personal service. Outsourcing, call centers and centralization are some of the key words.

d. Low Organization Level

Lastly, compared to all kinds of commercial organizations on the company side, the organization level of consumers still is rather low; they mainly stay on an individual level. This makes it harder for them to bundle their interests and eventually sue companies in hard cases.

III. CONSUMER PROTECTION

1. Idea and Goals

The central idea of consumer protection is to adequately take into account consumer interests, thus fulfilling their needs in an ideal way.³

Its goals reflect the risks mentioned:⁴ Consumers are to be protected against dangerous products, manipulative advertising, unfair contract terms and overpricing. The general knowledge basis and the overall bargaining power of consumers are to be improved. Finally, enforcement of consumer claims is to be facilitated.

3 VON HIPPEL (Fn. 2) 21; cf. W. KROEBER-RIEL/P. WEINBERG, *Konsumentenverhalten* (8th edition, 2003) 690 et seq.

4 See VON HIPPEL (Fn. 2) 25 et seq.; K. SIMITIS, *Verbraucherschutz – Schlagwort oder Rechtsprinzip?* (1976) 95 et seq.

2. *Historical Development*

a. *Germany*

After the Second World War, the primary need was direct help and basic organization of consumers; objective product tests were introduced and an extensive law to protect competition was promulgated.⁵ The 1960s revealed a strong U.S. influence, with President Kennedy's speech on fundamental consumer rights (safe products, information, free choice, political organization) as the keystone. Later a similar charter of the EU Commission followed, and more and more specified laws were enacted, for example the law on pre-formulated contract terms and the law on food composition. In the 1980s concern shifted to financial products and door-to-door transactions. A strong demand for information and counseling arose with the re-unification and the formal end of the German Democratic Republic.

Lately, with the recent BSE scandal, food safety has become one of the main issues, reflected in a trend to an ever-increasing body of information duties toward consumers. The importance of consumer protection regulations also is shown by the fact that many special laws have now been included in the general German Civil Code.

b. *Japan*

In the postwar period, Japan first needed to recover, and shortages and inflation had to be addressed.⁶ The phase of continuing and mostly stable growth starting in the 1960s was accompanied by stronger concerns for product safety, later also for regulation of consumer credit and protection against unfair contract terms. With the burst of the economic bubble at the beginning of the 1990s, consumer insolvency as well as fraudulent business behavior had to be fought. At the same time the legislative approach gradually changed as deregulation began, and an attempt was made to strengthen consumers' own interests and maturity. This general trend to "privatization," denoting a shift from state, legislative or administrative intervention to private regulation and empowering of consumers via information, still continues today.⁷

Unlike in Germany, a central law was enacted as early as 1968, the "Consumer Protection Basic Act" (recently revised as "Consumer Basic Act").⁸ It broadly aims at improving consumer protection and introducing liabilities of state and local governments, businesses and consumers themselves. Several measures to be taken are enu-

5 For background information refer to the homepage of the "Verbraucherzentrale Bundesverband," <<http://www.vzbv.de/go>>.

6 Related background information can be found at the "Shôhi-sha no mado," <<http://www.consumer.go.jp/english/index.html>>.

7 DERNAUER (Fn. 1) 35 et seq.; T. MATSUMOTO, Privatization of Consumer Law: Current Developments and Features of Consumer Law in Japan at the Turn of the Century, in: Hitotsubashi Journal of Law and Politics 2002, 1 et seq.; K. NAKATA, Verbraucherschutz in Japan, Recht in Japan 14 (2006) 32 et seq.

8 *Shôhi-sha kihon-hô*, Law No. 78/1968 as amended by Law No.70/2004.

merated (i.e., damage prevention, measurements, standards and labeling, competition between companies, education of citizens, product tests, handling of complaints, organization of consumers) and a special “Consumer Protection Council” was founded as a forum for consumer needs and interests.

In addition, the “Consumer Contract Act”⁹ of 2000 provides for a general possibility to rescind contracts if terms were misunderstood by consumers or if they were distressed by their professional business partners, together with a right for “Qualified Consumer Organizations” to demand injunctions.¹⁰

3. *Measures and Remedies*

Summarizing measures and remedies put forward by the fairly numerous specific laws in Germany as well as in Japan, two levels of intervention can be discerned: the broader societal and the specific contract level.

a. *Macro-Level (Society)*

Taking into view society as a whole on a “macro-level” brings us back to measures already well known from above: Legal, judicial and administrative control is exerted, companies are urged to employ a system of self-control, economic competition is encouraged and consumers’ organization, representation, education and information is supported and strengthened.

b. *Micro-Level (Contract)*

Remedies on the “micro-level” of a specific contract can again be differentiated by time: Before the contract is concluded, the seller or service provider has to thoroughly inform the consumer about all the details material to the transaction. If he violates this duty, the usual sanction – at least in Germany – is mainly of a procedural nature. The revocation period for the transaction, which allows the consumer to rescind the contract, is extended or does not start to run at all. Sometimes material remedies are also prescribed, for instance the concerned company has to pay damages or loses certain legal advantages it would otherwise enjoy.

After the conclusion of a contract, consumers usually are fitted with a special right to revoke the contract and eventually return any goods during a limited period. Also the specific contents of a contract may fall under judicial scrutiny to discover unfair terms or unjustified deviations from governing legal regulations.

9 *Shôhi-sha keiyaku-hô*, Law No. 61/2000 as amended by Law No. 56/2006.

10 Concerning the Act see NAKATA (Fn. 7) 49 et seq.

IV. INFORMATION

Information by now has been repeatedly mentioned as a central measure of consumer protection, especially in the pre-contractual phase. Accordingly, the remainder of the article will focus on this singular issue.^h

1. *Function*

The main function of information is to increase the transparency of commercial workings in a broad sense and thereby to ameliorate the “information gap” between consumers and companies.¹¹ It is – in other words – a means to adjust the scales where the market fails to do so itself.

As a consequence, consumers’ rational market behavior can be increased because now at least theoretically it should become easier for them to make an “informed decision” and conclude contracts with “real consent.” For the companies, providing information is also a way to control business fairness and show a certain amount of good faith, ultimately fulfilling a “moral duty” toward their customers and society.¹²

2. *Voluntary versus Duty*

Of course, companies may already provide information voluntarily without any legal obligation. Nevertheless, empirical evidence shows that companies usually do so only via advertising, which does not lead to objective information but rather to “one-sided” promotion of their respective products. As long as the market does not force it otherwise, not much is gained. Hence a statutory duty of information as a legal supplement in addition to market mechanisms is widely deemed indispensable.

3. *Areas Covered*

a. *Missing Overall Concept*

Information duties are found in many different fields, but there is no overall legal concept discernable that might be put down as a general rule.¹³ In fact, regulations seem to

11 Cf. The Report on OECD Member Countries’ Approaches to Consumer Contracts, DSTI/CP(2006)8/Final (6.7.2007), 6; DERNAUER (Fn. 1) 72; P.A. HERBIG / F.A. PALUMBO, Japanese Consumer Protection, in: Journal of Consumer Marketing 1994, 13, regard the lack of information as one major reason for Japanese consumer “apathy” toward high retail prices.

12 T. WILHELMSSON, European Rules on Pre-contractual Information Duties?, in: ERA-Forum 2005, 17 et seq.

13 See also N. REICH, Schuldrechtliche Informationspflichten gegenüber Endverbrauchern, in: Neue Juristische Wochenschrift 1978, 518. In Germany the “Civil Code Information Duties Regulation” of 2002 contains most of the detailed information duties that accompany Civil Code regulations, as can be seen below. However, this only means that several specific provisions are concentrated in one place and does not provide a general idea. In Japan similarly extensive regulations can be found in the “Act on Specified Commercial Trans-

be more or less casuistic in nature. They are limited to certain areas of business, which are roughly the same in both Germany and Japan.¹⁴

b. Selected Regulations

Some selected regulations shall serve to illustrate the typical character of these provisions.

aa. Germany

In case of distance sales, where a contract has been concluded by telephone or the like, § 312 c I 1 Civil Code (BGB) together with § 1 Information Duties Regulation (BGB-InfoV) demands “clear and easily understandable information” concerning the transaction that has to be given first orally and later in written form, in accordance with several pages of detailed requirements. Similarly extensive regulations govern electronic transactions mainly via the Internet, § 312 e I 1 BGB, § 3 InfoV, and travel contracts, § 651 a III 2 BGB, §§ 4 et seq. InfoV.

Contract terms of consumer credit have to be very elaborate, § 492 I 5 BGB, and for insurance contracts §§ 6 et seq. of the newly drafted Insurance Contract Law (VVG)¹⁵ requires circumstantial counseling and information by the insurer.

bb. Japan

Most Japanese information duties are part of the “Act on Specified Commercial Transactions” of 1976. Its Artt. 3 et seq., for example, specify duties for door-to-door sales contracts, mainly consisting of preparing a document that contains extensive information on the respective transaction. In case of mail order sales, Artt. 11 et seq., similar obligations apply, including an explicit prohibition of misleading advertising. Nearly the same holds for contracts concluded via telemarketing (Artt. 16 et seq.).

A particularity is to be mentioned concerning electronic consumer contracts that were agreed upon using the Internet: Here the general regulation in Art. 95 of the Japanese Civil Code that the rule of mistake cannot be invoked when the person erring did so because of gross negligence, does not apply under certain circumstances stated in Art. 3 of the Special Provisions Act¹⁶ of 2001.

actions” of 1976, *Tokutei shô-torihiki ni kansuru hôritsu*, Law No. 57/1976 as amended by Law No. 74/2008, which after a more or less programmatic opening provision again details many specific regulations concerning various kinds of transactions.

14 See, for example, DERNAUER (Fn. 1) 76 et seq.; NAKATA (Fn. 7) 41 et seq.

15 Bundestagsdrucksache 16/3945 (20.12.2006), motives cf. 47 et seq. and 58 et seq.

16 *Denshi shôhi-sha keiyaku oyobi denshi shôdaku tsûchi ni kansuru Minpô no tokurei ni kansuru hôritsu*, Law No. 13/2001.

4. *Recent Examples*

Two recent examples will give a final outlook on information issues prevalent today.

a. *Germany: "Consumer Information Law" of 2007*

Against the background of a scandal caused by spoiled meat that nevertheless was sold as food, in 2007 the "Consumer Information Law"¹⁷ was drafted. Aiming at the common goal of ameliorating the structurally asymmetric information distribution between consumers and companies, it mainly contains two important regulations: It will get easier for consumers to gain access to relevant governmental data on specific demand. In addition, public authorities shall fall under an increased information duty once they acquire knowledge of any irregularities concerning food, in which case they are also obliged to name the respective company.

b. *Japan: Amendment of "Consumer Products Safety Law" 2007*

In a series of accidents mainly involving products using gas or oil that resulted in sometimes severe damage and injuries, consumers were not informed in a timely manner of the danger of the products concerned. To avoid similar problems in the future, the "Consumer Products Safety Law"¹⁸ was amended in 2007. Now the Ministry of Economy, Trade and Industry (METI) is to be informed by the respective company, and it will then accordingly announce to the public the name of the company, the product and further details.¹⁹

V. CRITICAL ASSESSMENT

At first glance, improving consumer information as put forward in the regulations mentioned above is something many have wished for in the past. However, increased information duties do not come without some downsides. These are on the one hand related to the nature of information itself, and on the other hand to the consumer image inherent in the underlying approach.

1. *Overvalued Concept of Information*

a. *Limited Scope*

First, increasing information is not an overall remedy for consumers' structural disadvantage: It can only help where this handicap is actually based on an information deficit.²⁰

17 Bundestagsdrucksache 16/5404 (22.5.2007), motives cf. 7 et seq.

18 *Shôhi seikatsu-yô seihin anzen-hô*, Law No. 31/1973 as amended by Law No. 117/2007.

19 See NCAC News, Vol. 18, No. 6, March 2007, on the Internet <http://www.kokusen.go.jp/e-hello/data/ncac_news18_6.pdf>.

20 VON HIPPEL (Fn. 2) 37.

b. Limited Usage

Furthermore, it has been shown empirically that consumers often ask for information but do not use it after it has been made public.²¹ Thus information in many cases “evaporates” without measurable effect. Concerning specific information that is not easily accessible and will not be given by companies voluntarily, enforcing it usually is too costly and complicated for consumers compared to the low economic importance of respective transactions.²² For example, an individual customer hardly will legally proceed against a company to enquire the proper ingredients of a frozen pizza.

c. Bad Quality

Even information that is provided by companies not via advertising but according to statutory regulations still usually is one-sided and at least selective. Keeping in mind the complicated technical or chemical nature of many modern products, the information is easy to manipulate in a way that is often unpractical and not understandable for the average consumer, as it is naturally not tailored to personal needs.²³ For example, information about detergent or drug contents is aimed chiefly at avoiding legal liability and not at practically helping consumers. When information is instead provided by third parties that guarantee a certain amount of objectivity, it often comes too late to be used in a factual purchase decision. Because of the lack of proper sources, it is sometimes also imprecise and legal barriers prohibit delving deeper or actually accusing companies in public. In addition, third parties like consumer associations or non-profit organizations have far less communicative reach compared to companies; with their limited budgets they must rely on cheap information channels like the Internet or certain specialized magazines, whereas companies may and will use full-blown advertising in all relevant media.²⁴

d. Information Overload

Turning to the addressee of information, consumers already are pummeled with far too much data. Recent studies of modern means of communication such as television and the Internet show that as much as 98% of the information presented cannot be handled by the human brain.²⁵ Hence it is to be feared that in this flood of information, truly important data is lost; for example, picture an insurance form containing 83 pages of small print.²⁶ An overflow of information also leads to stress on the part of the consumer so

21 VON HIPPEL (Fn. 2) 37.

22 SIMITIS (Fn. 4) 115 et seq..

23 Cf. SIMITIS (Fn. 4) pp. 111 et seq.

24 SIMITIS (Fn. 4) 118 et seq.

25 S. RINNE / C. RENNHAK, Information Overload – warum wir in der Kommunikation neue Wege gehen müssen, Munich Business School Working Paper 2006-05, 6.

26 Example taken from W. RÖMER, Zu den Informationspflichten nach dem neuen VVG, in: Versicherungsrecht 2007, 618, fn. 12. See also M. REHBERG, Der staatliche Umgang mit

that decisions actually may become more difficult to make and produce worse results.²⁷ In this way information may cause an adverse effect compared to the intended goal of improving the consumers' position.

e. Cost and Contradictive Tendencies

Regardless of the positive or negative effects increased information duties may have, they are, in any case, quite costly for companies to adhere to. Also there may be a contradiction between more obligations and political plans to reduce bureaucracy. For example, the German Ministry for Food, Agriculture and Consumer Protection alone lists 1,739 duties existing at the moment – 80%, of course, based on EU law (mainly concerning animal or plant protection). If feasible, these are to be significantly reduced in the future.

2. Schizophrenic Consumer Image

The concept of information itself is not alone in being criticized; the consumer image transported by many regulations and their underlying rationales also deserves some critical remarks.

a. Doubtful “Consumer Sovereignty”

“Consumer sovereignty” is one of the most popular phrases when explaining the alleged advantages of increased information.²⁸ As was mentioned before, improved information may actually help consumers to conclude contracts with “real consent.” However, to infer from this fact that they acquire some kind of “general maturity” in the sense of a true balance with their company counterparts is unrealistic. It rather seems to be a more or less ideological argument to elevate consumers to a position of judges on product value and quality, thus assuming that they act on their own accord and risk and hiding companies' marketing influence and lack of real competition.²⁹ Moreover, consumers do not act “professionally” like companies; they do not have strict preferences, they are not market experts and the importance of a single purchase decision is usually only small.³⁰

b. Inexistent Rational Behavior

To further suggest that consumers behave rationally in their decisions (*homo oeconomicus*) is often a bit farfetched, as the concept of the so-called “bounded rationality” already shows on a theoretical level. Empirical data from neuroscience and marketing

Information, in: EGER / SCHÄFER (ed.), *Ökonomische Analyse der europäischen Zivilrechtsentwicklung* (2007) 287 et seq.

27 REHBERG (Fn. 26), 319 et seq.; RINNE / RENNHAKE (Fn. 25) 8.

28 See for example REHBERG (Fn. 26) 308 et seq.

29 KROEBER-RIEL / WEINBERG (Fn. 3) 685 et seq.; see also SIMITIS (Fn. 4) 108.

30 SIMITIS (Fn. 4) 109 et seq.

experts further highlights that impulse-induced actions are of far greater importance.³¹ Consumers' decisions are typically very subjective: They often make use of "trust" toward certain brands³² and base choices on their own experiences and those of their peers.

c. Over-Demanding Shift of Consumer Role

It might also overstrain the role consumers can actually play when in a fairly quick move they are now turned from "victims" (or the Japanese "*seikatsu-sha*"³³) in the meaning of dependent individuals to "agents" in the sense of independent trend-setters.

d. Maturity versus Pampering

At the same time, the suggested maturity of consumers by way of improved information goes hand in hand with a certain immaturity or even a kind of pampering when overdoing it, as it nowadays often can be seen. The most prominent examples here are the sometimes hilarious disclaimers and product warnings that were introduced following the U.S. model to escape liability risks.³⁴ The McDonald's coffee cup whose "contents may be hot" is well known, but to avoid using hair coloring "as an ice cream topping" and warnings not to "attempt to swallow" a mattress might perhaps be new to some.

e. Conditioning of Irresponsible Thinking

Apart from the information overload, the ever-increasing information duties companies must follow might – especially in light of the disclaimers just mentioned – lead to irresponsible thinking and behavior on the part of the consumers. As the "basic risk of life" is increasingly taken away from them, they are encouraged to adapt accordingly: If you treat someone as a minor long enough, he will gradually turn into one. This is already clearly visible in Japan in the form of ever-present announcements and signs reminding citizens of all but the least dangers that may be lurking somewhere; indeed, people tend to be completely lost once this advice exceptionally happens not to be there. In Germany we at the moment strongly believe in the almost magical powers of product labeling,³⁵ especially with different seals for supposedly organically and biologically produced food, without realizing that these products may have traveled once around the globe or that they were possibly manufactured under commonly condemned labor standards and practices.

31 KROEBER-RIEL / WEINBERG (Fn. 3). 686.

32 SIMITIS (Fn. 4) 113; also REHBERG (Fn. 26). 315 et seq.

33 See especially DERNAUER (Fn. 1) 66 et seq.

34 For background information cf. R. ALEXANDER, Product Liability Warning Cases (1988), <<http://consumerlawpage.com/article/failure.shtml>>.

35 See, for example, the Regulation (EC) No 648/2004 (31.3.2004), EU Official Journal L 104 (8.4.2004) 1 et seq. and its amendment by Commission Regulation (EC) No 907/2006 (20.6.2006), EU Official Journal L 168 (21.6.2006) 5 et seq. on detergents. Concerning civil liability connected with "labeling," see REICH (Fn. 4) 513 et seq.

3. *Suggestions*

To conclude, some practical suggestions seem to be appropriate.

a. *Different Goal*

For a start, it might help to aim at a slightly more modest goal: Why not leave the high-brow idea of the “competent consumer” behind for some time and simply concentrate on making transactions easier?³⁶ Why not accept consumer behavior as it is, but at the same time actually take this behavior into account when trying to offer protection?³⁷

b. *Improve Quality*

For information to be useful, its quality plays a vital role. As seen above, “raw” information alone often is of only limited use. To improve this situation, information has to be central to the point, it has to be selected in the light of the respective purpose it is to be applied for and it needs to be “customized” or “translated” from pure facts to a personally meaningful message taking into account the information’s addressee.³⁸

c. *Reduce Amount*

Tightly linked with the problem of information quality is the question of the proper information amount. With the “information overflow” in mind, reduction and filtering is a must. The motto here has to be “less is more;” the individual consumer’s attention is a precious asset not to be wasted.³⁹

d. *Ease Access*

Once the quality of information in regard to its content and its appropriate amount has been improved, the next step is to facilitate its perception by way of understandable and easily accessible presentation.⁴⁰ Here especially the neurosciences may be taken into account.⁴¹

e. *Include Alternative Solutions*

Alternative solutions that were mentioned in the beginning should also not be forgotten: On the macro-level, a combination with increased company competition and professionalized consumer representation and organization can be imagined.⁴² On the micro-level of the individual contract, pre-contractual information duties can be accompanied by judicial content control afterwards.

36 In this direction REHBERG (Fn. 26) 349.

37 KROEBER-RIEL / WEINBERG (Fn.3) 693 et seq.

38 Cf. also REHBERG (Fn. 26) 347 et seq.

39 REHBERG (Fn. 26) 337.

40 See VON HIPPEL (Fn. 2) 38.

41 REHBERG (Fn. 26) 345.

42 Cf. VON HIPPEL (Fn. 2) 45 with further evidence.

f. Final Remark

After all these critical thoughts, a single request remains. It is not really based on legal or economic thought, but more or less on one humane idea: Leave something to life and uncertainty.

ZUSAMMENFASSUNG

Risiken für Verbraucher haben viele Ursachen, an erster Stelle zu nennen sind gefährliche Güter und Produkte, Missverständnisse über Waren und Dienstleistungen sowie benachteiligende Vertragsbestimmungen. Die Position der Verbraucher in einer immer komplexer werdenden Marktsituation wird dadurch noch zusätzlich verschlechtert, dass ihre Marktmacht und ihr Organisationsgrad recht gering sind. Der Verbraucherschutz versucht daher auf verschiedene Art und Weise, diese Position zu verbessern. Ein Instrument, das vor allem in der vorvertraglichen Phase eingesetzt werden kann, ist Information. Durch Verbraucheraufklärung hofft man, die „Informationslücke“ zu schließen und kompetentes Entscheiden zu fördern. Um dieses Ziel zu erreichen, sind seit den sechziger Jahren viele Gesetze erlassen worden, allerdings fehlt es immer noch an einem Gesamtkonzept. Zudem dürfen einige kritische Aspekte nicht übersehen werden: Informationen werden zwar häufig verlangt, aber nur selten tatsächlich eingesetzt, die Informationsqualität lässt regelmäßig zu wünschen übrig, und Verbraucher leiden ohnehin bereits unter einem „Informationsüberfluss“. Schließlich hat man üblicherweise auch ein Verbraucherbild vor Augen, das kaum kohärent ist. Denn wirkliche „Verbrauchersouveränität“ erscheint fraglich, rationales Verhalten lässt sich kaum erkennen, während andererseits Verbraucher wie Kleinkinder behandelt werden und so verantwortungsloses Denken noch weiter verstärkt wird. Etwaige Lösungsvorschläge sind überwiegend praktischer Natur, beispielsweise sich darauf zu konzentrieren, Transaktionen zu erleichtern, die Menge von Informationen zu verringern und dabei gleichzeitig ihre Qualität zu erhöhen, indem man sie filtert und stärker individuell anpasst. Kombinationen mit breiter angelegten Maßnahmen auf der Makro-Ebene sind ebenfalls denkbar.