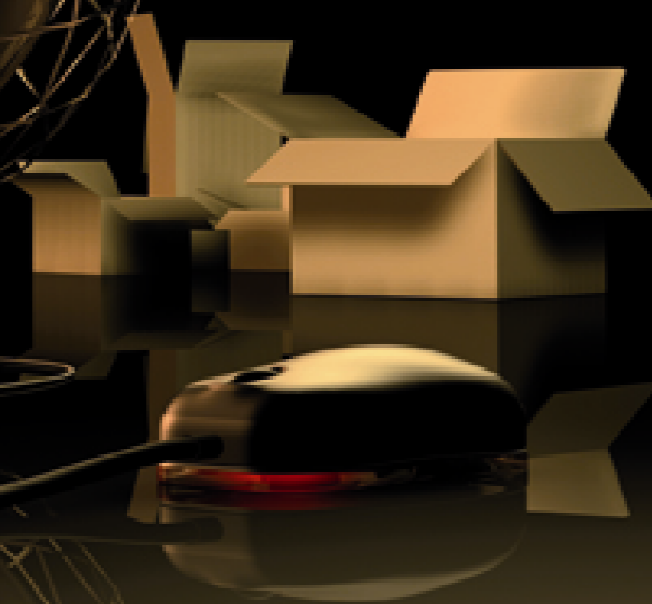


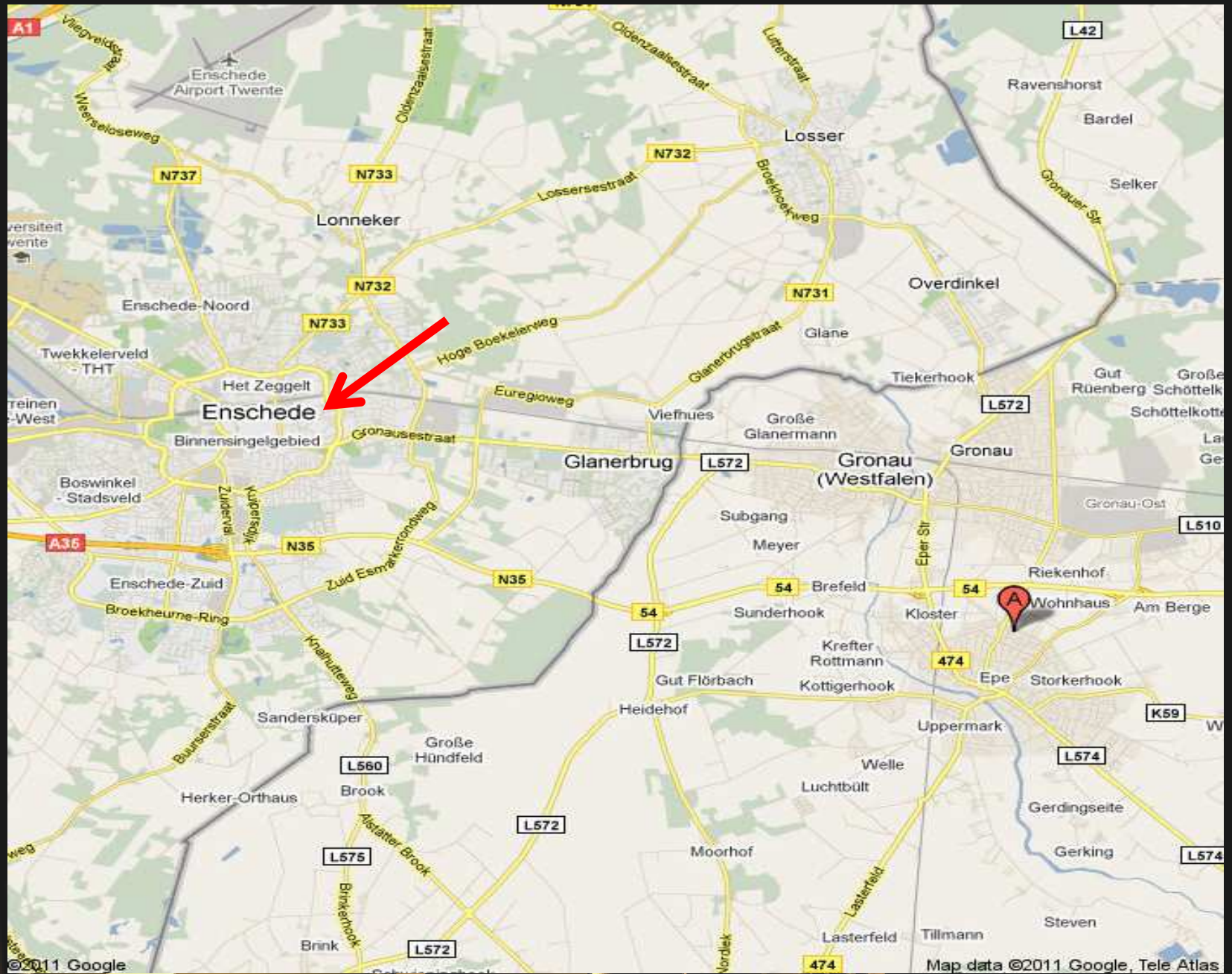
# **‘What will I do if it doesn’t work?’ Consumers, Cross-Border- Shopping, and the Law**



**Professor Christian Twigg-Flesner**  
Professor of Commercial Law







# Overview

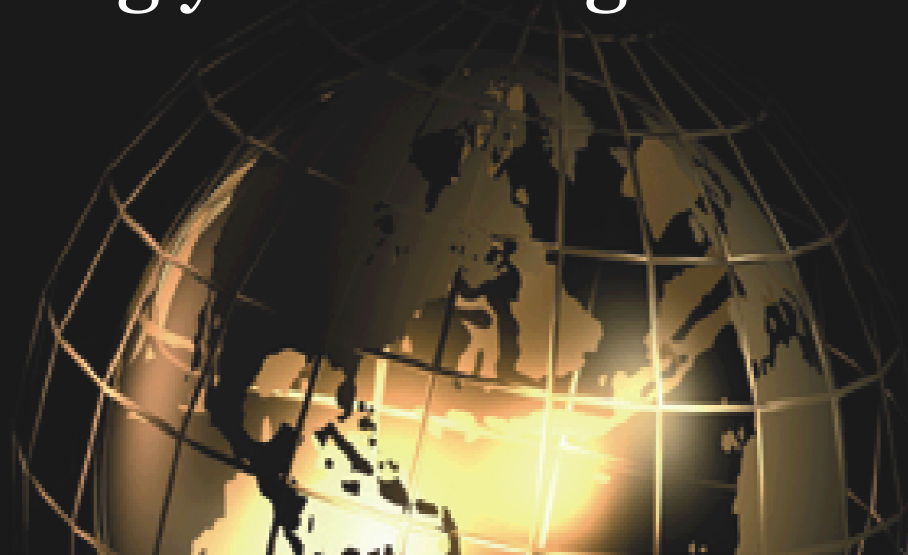
- Consumer rights when buying faulty goods
- Particular difficulties in the cross-border setting
- Established EU approach
- Current debate about a new approach
- Thoughts on a cross-border-only measure

*(Disclaimer)*



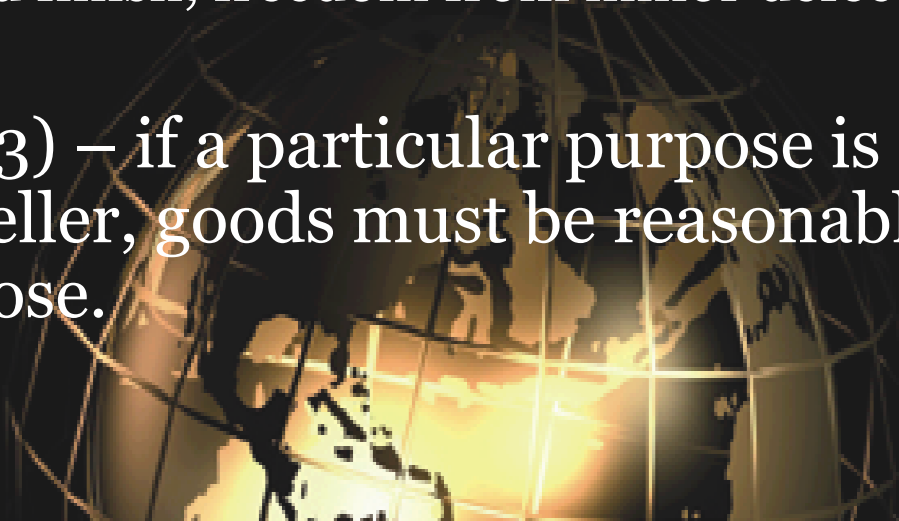
# Consumers and the Law

- Many consumers are not aware of their legal rights in a domestic setting
- Do you know what you would do if something you've bought doesn't work?



# A brief guide to domestic law

- Sale of Goods Act 1979
  - S.14(2) – goods must be of satisfactory quality
    - S.14(2A) – goods are satisfactory if a reasonable person would regard them as such, taking into account description, price, and other relevant circumstances
    - S.14(2B) – other relevant circumstances include durability, fitness for common purposes, appearance and finish, freedom from minor defects, safety etc.
  - S.14(3) – if a particular purpose is made known to the seller, goods must be reasonably fit for that purpose.



# A brief guide to domestic law

- Remedies:
  - Rejection of goods and full refund until deemed to have accepted goods (s.35 SoGA) – usually about 4 weeks, but flexible.
  - Right to repair or replacement under s.48A SoGA
    - If unsuccessful, or not possible, price reduction or partial refund
  - Compensation (damages)
    - Reduced value of goods
    - “consequential losses



# A brief guide to domestic law

- Consumer has legal claim against seller, *not manufacturer*
- Guarantee/extended warranty has no direct bearing on legal rights of consumers
  - Confusion between retailers' guarantees and their legal obligations under the SoGA





# Cross-Border Shopping

- General Problems
  - Communication (Language, cultural variations)
  - Practicalities such as transport/delivery
  - Concern about after-sales support



# Cross-Border Shopping

- Legal Problems
  - “conflict” between at least two sets of legal rules (jurisdictions)
  - Which law applies to the transaction?
    - “Rome I” Regulation
    - Special rules for consumer contracts
    - Preserve “mandatory rules” of consumer’s jurisdiction even if other law applies



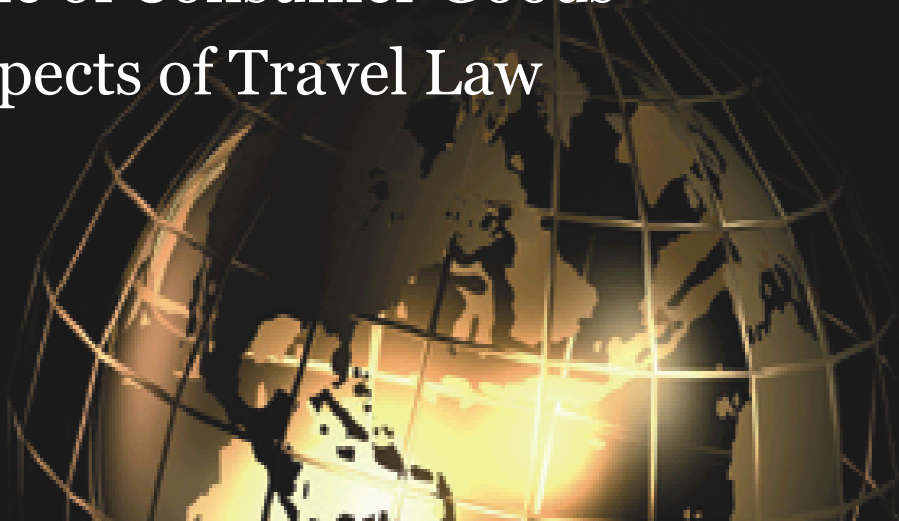
# Cross-Border Shopping

- Conflict of Laws rules help to identify applicable law, but do not provide substantive answers
- So familiarity with relevant national law(s), and mandatory rules, necessary for both traders and consumers



# EU Consumer Law

- Harmonisation (approximation) of key areas of consumer law
  - E.g.
    - Door-step and distance selling
    - Unfair contract Terms
    - Sale of Consumer Goods
    - Aspects of Travel Law



# EU Harmonisation of Consumer Law

- Competence of EU to legislate
  - Shared with Member States
  - Two situations:
    1. Establishment/Operation of the Internal Market
    2. Supplement, support and monitor Member State activities



# EU Harmonisation of Consumer Law

- Main focus: Internal Market
  - Remove obstacles for traders
  - Increase consumer confidence
- Legal tools:
  - Directives
  - Regulations



# EU Harmonisation of Consumer Law

- Main tool so far: DIRECTIVES
  - Specify particular result
  - Member States must legislate to give legal effect to directive
  - Cannot be relied on directly by consumer against trader



# EU Harmonisation of Consumer Law

- Consumer Law Directives
  - Selected aspects of consumer law
  - Need transposition into national laws
  - “Minimum harmonisation” standard
- Result: still 27 different sets of consumer law, albeit with some common rules





# A change of direction?

- European Commission launched review of practice to-date in 2004
- *EC Consumer Law Compendium*
  - Still significant differences
    - Minimum harmonisation
    - Regulatory Gaps



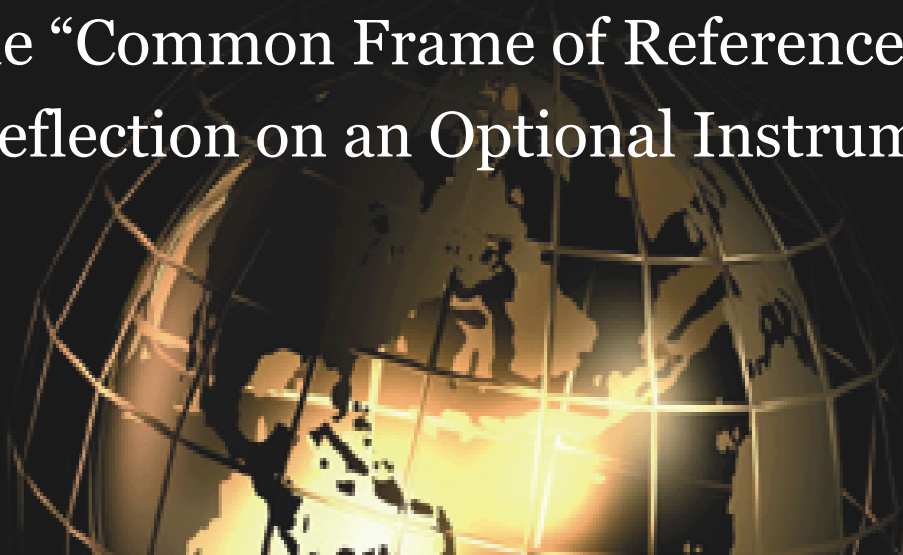
# A change of direction?

- Result: Consumer Rights Directive proposal
  - Combining and streamlining existing directives
  - Shift to full harmonisation
- **BUT:** negotiations very difficult and considerable back-tracking.
- **Is there an alternative?**



# The EU Contract Law project

- 2001 Green Paper on EU Contract Law and follow-up communications
  - Broader EU approach to Contract Law generally?
    - The “Common Frame of Reference”
    - “Reflection on an Optional Instrument”



# The EU Contract Law project

- July 2010: Green Paper on policy options
  - (Legislative toolbox)
  - Optional Instrument now under serious consideration
    - Scope to be determined (B2B, B2C, cross-border only?)



# Towards a cross-border-only Regulation?

- Regulation preferable to Directive
  - Directly applicable
  - Uniform text
  - No need for transposition
    - No variation between Member States
    - No need to identify relevant national law




# Towards a cross-border-only Regulation?

- No *legal* obstacle to Regulation
- *Politically* potentially controversial
  - Consumer law visibly European
  - Impact on small-scale domestic (local) transactions
  - Cross-border only more acceptable?



# Towards a cross-border-only Regulation?

## Defining “Cross-border transaction”

1. Consumer and trader are based in the same jurisdiction.
  2. Consumer and trader are based in separate jurisdictions and the contract is concluded at a distance (on-line).
  3. Consumer and trader are based in separate jurisdictions but in a border region and the consumer travels into the neighbouring country to conclude a contract face-to-face.
  4. A variant on (3), but the consumer is on holiday in another country and concludes a contract face-to-face.
  5. Consumer and trader are based in separate jurisdictions, but the trader visits the consumer and concludes a contract (eg, door-step selling; markets; exhibitions)
- 

# Towards a cross-border-only Regulation?

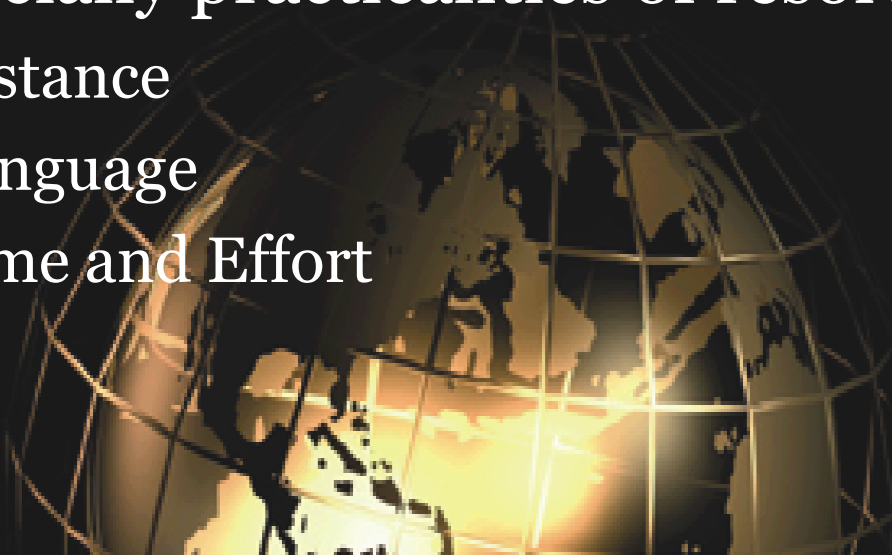
- Way forward:
  - EU to concentrate on online/distance cross-border transactions
    - Recognition that cross-border context might raise separate issues (e.g., network liability)
  - Optional or automatic application?
    - “*Blue Button*” ?





# Legal vs Practical Issues

- Limits of law in supporting cross-border consumer transactions
- Practical considerations more important?
  - Especially practicalities of resolving problems
    - Distance
    - Language
    - Time and Effort



# **‘What will I do if it doesn’t work?’**

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