

Perspective for European Consumer Law: Towards a Directive on European Consumer Rights and Beyond, edited by Hans Schulte-Nölke and Lubos Tichý (Münich: Sellier, 2010), vi + 183 pp. paperback, € 69, ISBN: 978-3-86653-131-4.

Review by Willem H. van Boom

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This volume brings together the papers presented at a Prague conference on the 2008 draft Consumer Rights Directive (COM(2008) 614 final). For those unfamiliar with this draft: the Directive (if and when finalized) aims at recodifying the existing *acquis* of horizontal directives on consumer contracts – such as the directives on unfair contract terms, consumer sales and distance selling – and at substituting the current minimum harmonization character of the existing *acquis* by full harmonization. In academic writing, there is substantial scholarly criticism with regard to this paradigmatic shift towards full harmonization, fuelled especially by the fact that the draft taken as a whole does not really set forth more stringent rules or deliver a more protective regime than the current minimum harmonization regime. Some member states would have to revoke their more protective consumer law rules. Therefore, the draft is considered by some as a step back rather than a step forward. Some of this criticism is also voiced in this book. My personal opinion is that the draft should be shelved entirely for the reasons explained in 5 *Journal of Contemporary European Research* 3 (2010), pp. 452-464.

The Prague conference was organised on the occasion of the Czech EU Presidency. Contributors were recruited from circles of the Research Group on the Existing EC Private Law (a.k.a. the *Acquis Group*, see www.acquis-group.org) and Czech scholars and practitioners. The book is divided into two parts (“The Proposal for a Directive on Consumer Rights” and “Political, Practical and Theoretical Perspectives of the Proposal”), though the watershed between the two parts is not really clear-cut. As a whole, the book consists of both scholarly contributions reflecting on the draft and a number of contributions by practising Czech authors shedding light on the draft from different perspectives.

In Part I, Grynbaum (Paris V) concentrates on precontractual information duties. His conclusion is that the draft reduces the number of information duties whilst omitting to set forth a clear framework of sanctions for the violation of these duties. This neglect will unavoidably lead to the failure of full harmonization, or so Grynbaum asserts.

Schulze (Münster) discusses the right of withdrawal under the regime of the draft Directive compared to the equivalent provisions in the draft Common Frame of Reference (DCFR); Schulze calls for improved coherency in both.

Stuyck (Leuven) addresses a number of issues concerning the provisions on consumer sales in the draft; more generally, Stuyck is highly critical of the full harmonisation nature of the draft in light of (inter alia) the unclear scope of application and the fact that the level of consumer protection is actually lowered by the draft.

Pfeiffer (Heidelberg) also discusses the sales contract aspects of the draft. He concludes that the draft intrudes into areas of the law which are deeply embedded in different branches of the law of obligations – he predicts controversy and uncertainty.

Tichý (Prague) presents an in-depth discussion of unfair contract terms in consumer contracts; he compares the regulation of general contract terms in European law with the draft

Czech civil code. Moreover, he draws attention to the deplorable quality of the Czech translation of the draft and offers concrete suggestions for improving the draft Directive.

Pelikán (Prague solicitor) deals with the permissibility of unilateral change of contract terms long-term consumer contracts, drawing on the existing consumer law *acquis* and domestic Czech experience.

In Part II, Czech government official Froňková opens by seemingly downplaying the need for consumer protection. It seems that adequate protection for consumers is good enough: 'Vendors and consumers play the role of impetuses to the market. Therefore, it is necessary to protect consumers only insofar as it would not restrict the economic activity of vendors.' (p. 91) Since excessively strict provisions would lead to a rise in prices, the Czech Presidency set out to attain a Directive what is well-balanced for both sides and constitutes a *reasonable* level of consumer protection (p. 91). I am not sure whether the author thus consciously contrasts with the *high* level of protection as laid down in art. 169 TFEU) but I am sure it would raise eyebrows amongst pro-consumer lawyers. I would have liked to have read more on the issue of the price consumers pay for a high level of protection.

Froňková is supported by a brief 'declaration' by government official Brichacek, after which court judge Grygar shares his judicial experience with cases of Czech rogue traders. However, he also draws attention to insufficient caution of consumers.

Rezek, consumer organisation representative, welcomes the draft as an attempt to genuinely harmonize consumer law across Europe. In his view, it would take down barriers and enhance consumer trust in cross-border distance sales. This point echoes the Commission's approach to full harmonization in this area.

Hurdik (Brno) reflects on the theoretical implications of the ongoing Europeanisation of consumer law and the development of European private law from specific towards generic solutions. In particular, he draws attention to social change, exemplified by the Czech experience, as a driver for legal change in this area.

The final contribution is the Acquis Group's position paper on the draft Directive. Besides numerous valuable detailed comments, the more general critique stands out: the Group feels that the draft will not achieve improved coherence of the existing *acquis* and states that the case for full harmonisation is unconvincingly made by the Commission. Unfortunately, this latter point, which I hold to be pivotal in the discussion on the future of European consumer law, is not dealt with extensively. Rather, the Group seems to list several options ranging from isolating specific parts for full harmonization to the promulgation of a Regulation as an optional instrument 'for those Member States who are ready for full harmonization'. I am a bit confused as to what this latter proposal exactly purports to achieve other than the continuation of the current diversity of protection levels. I would have liked to have read more on the underpinning of the options presented here.

To conclude: this volume is an interesting addition to the already extensive number of publications concerning the draft Directive. On balance, however, it must be said that the contributions are of a varying quality and intensity. Some contributors take a closer look below the surface of the draft whereas others merely scratch this surface. Furthermore, in my view the word 'beyond' in the title promises more than the book delivers given that the contributions hardly reflect on the way forward after enactment of the Directive (if and when).

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