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H.-W. MICKLITZ, N. REICH, P. ROTT & K. TONNER, *European Consumer Law (Ius Communitatis Series 5, 2nd edn)**

M.B.M. LOOS**

In 2009, Hans-W. Micklitz, Norbert Reich, and Peter Rott published their book *Understanding EU Consumer Law*.¹ The book discussed here is the second edition of this book; the reason why the title of the book was changed is not explained but undoubtedly is based on commercial considerations. The book is based on a 'horizontal approach' to EU consumer law, as the authors explain in their Preface (p. 9): they have chosen not to focus primarily on existing (sector-specific) EU legislation but rather to look at European consumer law from a larger perspective. In Chapter 1, Reich and Micklitz discuss the background and concepts of European consumer law. Together, they also discuss the Consumer Sales Directive (Ch. 4). In Chapter 2, Micklitz addresses the law on commercial practices (including misleading and comparative advertising). He also wrote Chapters 3 (on unfair terms) and 6 (on liability for defective goods and services – the latter part basically reflects a proposal for legislation rather than a discussion of the existing law). In turn, Reich discusses European private international law (Ch. 7) and individual and collective enforcement of consumer law (Ch. 8). In Chapter 5, Rott discusses the Consumer Credit Directive. A new edition to the book is Chapter 9, written by Klaus Tonner, on the Consumer Rights Directive and its impact on distance selling.

The most interesting part of the book (apart from Micklitz' plea for legislation in the area of consumer services) is to be found in Chapter 1. Reich and Micklitz first indicate what the role of consumer law in primary EU law is, what the legal basis for secondary EU legislation, and what the differences are between minimum, full, and targeted harmonization. In addition, they discuss the benchmarks of the informed and vulnerable consumer as developed in the case law of the Court of Justice. The chapter ends with a conceptual outlook at the future direction for European consumer law, in which they explain their agenda for legal reform. In this section (pp. 52-65), Reich and Micklitz argue that the Court's choice to interpret the consumer notion restrictively (consumers are only natural persons that exclusively or primarily deal for private purposes) does not follow from primary EU law and that the Court has left room to the European and

* XLVII + 419 Pages.

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1 H.-W. MICKLITZ, N. REICH & P. ROTT, *Understanding EU Consumer Law* (Antwerp: Intersentia, 2009), 378 + XVIII pp.

national legislators to expand the consumer notion to other persons lacking professional expertise already since the *Di Pinto* case.² Competitive differences have resulted from the fact that Member States have taken advantage of this possibility to a large degree, which differences the European legislator subsequently has tried to eliminate by imposing the restrictive consumer notion on the basis of full harmonization. Reich and Micklitz counter this approach by arguing that the European legislator should not focus on the transaction at hand but rather focus on the position of the acting person in the marketplace. In this respect, they argue, the consumer is to be seen as passive market citizen (a *homo economicus passivus*) who concludes contracts to satisfy his or her needs for goods or services he or she cannot produce himself or herself. They remark that part of the European legislation already follows this line of reasoning. The most prominent example thereof is the Services Directive.³ In particular, Articles 19-22 of this Directive aim to protect the ‘recipient of the services’ from discrimination and to provide the recipient with assistance and detailed information pertaining to the services covered by the directive. The scope of these provisions is not restricted to the traditional consumer, as the provisions also cover the situation where the recipient of the service is a commercial party. In addition, in the case of the so-called services of general interest – in particular in the area of former state monopolies such as telecommunication, energy, and public transport – a ‘right of access’ to these services is guaranteed to not only consumers. Likewise, in the area of passengers, tourism, and travel, it is not so much the private or commercial reason for the trip but rather the position of the client as recipient of the service that is the focus of the European legislation. In sum, there is a development from ‘consumer protection’ towards ‘user protection’, and this is even prominent with regard to intellectual property law. I am curious whether this trend, which I do see, will continue to develop, but I have my doubts as there are also developments in the other direction: the restrictive definition of the consumer notion in the Consumer Rights Directive and the proposal for a new Package Travel Directive, as well as the developments regarding the proposal for a Common European Sales Law. Yet, the development of protective measures for SMEs in that latter instrument, as well as the existence of the Late Payment Directive, may offer some additional support for the development of ‘user protection law’. I cannot wait to read the next edition of this book.

2 CJEU 14 Mar. 1991, Case C-361/89, ECLI:EU:C:1991:118 [ECR] 1991, p. I-1189 (*Di Pinto*).

3 Directive 2006/123/EG, OJ 2006, L 376/36.