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Stefan Wrška

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EUROPEAN CONSUMER ACCESS TO JUSTICE REVISITED

European Consumer Access to Justice Revisited takes into account both procedural and substantive law questions in order to give the term ‘access to justice’ an enhanced meaning. Specifically, it analyses developments and recent trends in EU consumer law and aims to evaluate their potential for increasing consumer confidence in the cross-border market. Via a critical assessment of the advantages and disadvantages of the means initiated at the EU level, the author highlights possible detriments to the cross-border business-to-consumer (B2C) market. To remedy this, he introduces an alternative method of creating a legal framework that facilitates B2C transactions in the EU – ‘access to justice 2.0’.

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P R E F A C E

‘Access to justice’ is a term that embodies a concept purporting to an ideal situation. Like happiness or satisfaction, access to justice is something that most people are looking for but that nobody can really explain. At least, there is no standardised way to describe it. What is meant by ‘justice’ and what by ‘access to justice’?

In a legal context, access to justice traditionally refers to ideas closely interlinked with legal aid tools, or more generally speaking, to mechanisms that aim to empower the ‘underprivileged’ to access the judicial system. Other procedural mechanisms, such as collective redress or alternative dispute resolution tools, are also commonly found in this context and take into consideration additional obstacles to accessing courts and other dispute resolution institutions. This is especially true in the field of consumer law where various issues that can impact on whether individuals pursue their claims are particularly strong. These issues include a lack of legal information, a lack of confidence in dispute resolution, the financial risks of losing a case (in cases where the loser-pays principle applies) or low amounts in dispute. Contemporary EU policy-making aims to remove some of these obstacles.

More recently, however, discussions on how to better benefit consumers via substantive law have given fresh impetus to the access to justice debate, which is shifting from a discussion on justice understood as the judicial system towards a broader value-oriented understanding of justice. Thus, parameters such as substantive ‘fairness’ and ‘equality’ are more strongly infiltrating current debates. The question in this regard is whether legislative trends at the EU level ensure that consumer interests are properly considered in the law-making process.

In addition, both recent procedural and substantive law trends transcend the mere legal discussion. They also raise political, social and economic issues and relate to questions such as the ‘correct’ balancing of interests between weaker private actors and bigger players, the possible threat of sacrificing consumer interests for the sake of primarily

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satisfying those of traders in easy market access and the quest to raise consumer confidence in the internal market. The literature (thus far) is divided about the best possible means to answer these questions.

The purpose of this book is to add value to the discussion by providing new food for thought. The idea for this stems from the practical experience I have collected during my time working in law firms and the private sector before joining academia. Having seen how law works in practice, and not only on paper, has surely enhanced my research because it has allowed me to better understand the actual issues faced by traders and consumers when trying to transact with each other. The book aims to facilitate the quest for the most appropriate future of EU consumer law by examining EU consumer protection from a different angle. The key to this approach is a refined understanding of consumer access to justice. This revised concept takes procedural and substantive consumer law matters comprehensively into consideration and analyses both from a broader justice perspective that ranges from the judicial system itself to moral expressions of justice (such as satisfaction or fairness) without neglecting the traders' wish to reach the widest audience possible. The ultimate goal of the analysis is to introduce a multidimensional framework for EU consumer protection that synergises different solutions that (as a total package) could hopefully maximise both consumer satisfaction and the potential of the internal market.

Although the book tries to be as up to date as possible, I should note that the legislation and legislative developments analysed within are those as of June 2014. As far as later trends are concerned, I truly hope that this book will be read in time to implement the key ideas I introduce in the following chapters.

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I truly hope that this book will contribute to further discussions and developments of EU consumer law and consumer access to justice.

ABBREVIATIONS

ABGB	<i>Allgemeines Bürgerliches Gesetzbuch</i> (Austrian Civil Code)
ADR	alternative dispute resolution
ADR Directive	Directive on alternative dispute resolution for consumer disputes
AK	<i>Arbeiterkammer</i>
ALI	American Law Institute
B2B	business-to-business
B2C	business-to-consumer
BEUC	<i>Bureau Européen des Unions de Consommateurs</i> (European Consumers' Organisation)
BGB	<i>Bürgerliches Gesetzbuch</i> (German Civil Code)
BGH	<i>Bundesgerichtshof</i> (The Federal Court of Justice of Germany)
C2B	consumer-to-business
CESL	Common European Sales Law
CFR	Common Frame of Reference
CISG	United Nations Convention on the International Sale of Goods
CJEU	Court of Justice of the European Union
CoPECL	Joint Network on European Private Law
CPC Network	Regulation on Consumer Protection Cooperation Network
CPC Regulation	Regulation on Consumer Protection Cooperation
CPC System	Regulation on Consumer Protection Cooperation System
CPEC	Consumer Policy Evaluation Consortium
CRD	Directive on Consumer Rights
CSD	Consumer Sales Directive
CTM	Community Trade Mark
DCFR	Draft Common Frame of Reference
DG COMP	Directorate-General for Competition
DG ENTR	Directorate-General for Enterprise and Industry
DG IPOL	Directorate-General for Internal Policies
DG JUST	Directorate-General for Justice
DG SANCO	Directorate-General for Health and Consumers
EC	European Community
ECC	European Consumer Centre

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ECC-Net	European Consumer Centres Network
ECHR	European Convention on Human Rights
ECON	Economic and Monetary Affairs Committee
ECU	European Currency Unit
EEC	European Economic Community
EEJ-Net	Network for the extra-judicial settlement of consumer disputes
EEN	Enterprise Europe Network
EGBGB	<i>Einführungsgesetz zum Bürgerlichen Gesetzbuch</i> (German Introductory Act to the Civil Code)
EJN	European Judicial Network in Civil and Commercial Matters
ELI	European Law Institute
EMOTA	European Multi-channel and Online Trade Association
ESCP	European Small Claims Procedure
EU	European Union
EUIJ-Kyushu	European Union Institute in Japan, Kyushu
EUR	Euro
FRA	European Union Agency for Fundamental Rights
FTE	full-time equivalent
GWB	<i>Gesetz gegen Wettbewerbsbeschränkungen</i> (German Act Against Restraints of Competition)
IMCO	Internal Market and Consumer Protection Committee
JSPS	Japan Society for the Promotion of Science
JURI	Legal Affairs Committee
KapMuG	<i>Kapitalanleger-Musterverfahrensgesetz</i> (German Capital Markets Model Case Act)
KSchG	<i>Konsumentenschutzgesetz</i> (Austrian Consumer Protection Act)
MEP	Member of the European Parliament
ODR	online dispute resolution
ODR Regulation	Regulation on online dispute resolution for consumer disputes
OFT	Office of Fair Trading
OI	optional instrument
OJ	Official Journal of the European Union
PLD	Product Liability Directive
SE	<i>Societas Europaea</i>
SGECC	Study Group on a European Civil Code
SIN	Standard Information Notice
SMEs	small and medium-sized enterprises
TFEU	Treaty on the Functioning of the European Union
UCPD	Unfair Commercial Practices Directive
UCTD	Unfair Contract Terms Directive
UNIDROIT	International Institute for the Unification of Private Law
UWG	<i>Gesetz gegen den unlauteren Wettbewerb</i> (German Act Against Unfair Competition)
VKI	<i>Verein für Konsumenteninformation</i>