

Weaker Party and Consumer in E-commerce

Abstract

The guiding principles of private law include the principles of equality and autonomy of the will. The question of access to freedom of contract is highly relevant for contracting in e-commerce, given the almost exclusively adhesive nature of contracting. Real inequality and restrictions on freedom of contract undermine these principles, and one of the functions of the law is to balance the resulting asymmetry in the legal position of persons, which is something that the legislator, particularly the European legislator, has long sought to do.

The ambition of this dissertation is first to take a notional step back and, thanks to my legal specialization in e-commerce law, to critically evaluate the legislator's efforts, which I do more comprehensively in Chapters 4 and 5. For these purposes, I place the relevant legislation (which includes indirect consumer protection legislation such as the GDPR or the ePrivacy Directive) in the broader social context of the world of e-commerce. In doing so, I proceed systematically. First, I address issues such as the position of e-commerce in the economy, digitization, automation of work, and, last but not least, the data economy. I then elaborate on the legislative objectives of the legislator and, based on the data collected, enriched by my own practical experience, I evaluate whether the legislator has succeeded in meeting these objectives. I also evaluate whether, in adopting the selected legislation, it has followed the principles of best practice, i.e., appropriately, efficiently, and economically, i.e., minimizing the adverse side effects of the adopted legislation on society. The process of how the legislator decides is also not overlooked - whether he does so based on quality data and analysis, which is the best practice standard in the private sphere of the e-commerce world, or instead based on feelings, which is perceived in the private sphere as a euphemism for amateurism due to the easy availability of a wealth of data. I enrich the findings with my practical experience, which allows me to point out the very concrete shortcomings of the often almost careless legislative approach of the legislator and the legislation he adopts. This section concludes with several *de lege ferenda* suggestions.

The logical follow-up to this work is to address specific legislation to protect consumers and the weaker side of e-commerce. I deliberately spare neither a critical look at the legislation nor practical insight. Already with the definitions of basic concepts, I point out problematic aspects and, where possible, always focus on e-commerce. In Chapter 6, I summarise the *status quo* of the general regulatory framework relevant to e-commerce. Then, in nearly 80 pages of text, I address current problematic issues of consumer protection and weaker parties in e-commerce. Both the

issue of the use of cognitive biases in online marketing and issues such as the abuse of rights by consumers. Lastly, I analyze those parts of the Omnibus Directive regulation that are most relevant to e-commerce (*in concreto*, I address issues such as the communication of discounts, user reviews, administrative review of consumer contracts, as well as issues related to contracting and the content of e-commerce contracts, among others). Moving from general to specific, I have concluded that the law is deteriorating over time and that the Commission's work is not producing positive results in e-commerce overall.

Keywords: weaker party protection law, consumer protection law, e-commerce law