

The Notion of Consumer: European Union versus Member States

EWOUÐ HONDIUS*

Abstract

In the late 20th century the consumer has entered the legal scene. In the European Union, consumer protection has proven to be a most successful catalyst in law reform. This paper analyses two threats to this development. First, the European Court of Justice, as opposed to national courts, is increasingly interpreting the consumer notion in a way which leaves out the protection of the really weak, illiterate, poor consumer. Also, small businesspersons acting outside their expertise are not included. The forthcoming revision of the *acquis communautaire* of consumer protection should provide the opportunity to challenge this development. A second threat, at least according to several authors, is the debate on a European Civil Code. Should consumer protection measures be incorporated in a Consumer Code, or should the private law rules be taken up in a Civil Code? This paper expresses a strong preference for the latter option. Taking out consumer contracts would mean that Civil Codes would be deprived of most of their content and on the other hand, the incorporation of consumer protection — and other protection rules — in a Civil Code, means that such Codes do not become bullwarks of laissez-faire liberalism.

1. Introduction

A new phenomenon has found its place in the laws of nations and international organisations in the 20th century. In an era when civil and commercial law seemed to converge, the introduction of the notion of consumer has partly undone this newborn unity. Consumers have, of course, always been around, but only in the 20th century have they become a legal entity. How recent this is may become apparent from a very brief history: *un peu d'histoire* (Part 2). In Europe, the role of the European Union has been very prominent in promoting this development. Much of the harmonisation of private law is the result of consumer protection directives — and increasingly: regulations — of the European Union. It is therefore appropriate to look at the recent process of harmonisation of private law as well (Part 3). These directives and regulations raise the question of how to define the consumer: who, by law, is a consumer? The answer to this question will hopefully throw some light on the various positions on the consumer notion adopted by the European Union and its Court of Justice on the one hand, and Member States and national supreme courts on the other (Part 4). The related question of how to define the notions of professional, trade and industry, will not be covered by this paper. A final question to be dealt with is where any definition should be placed, in a Consumer Code or a Civil Code (Part 5). I will end this essay in honour of the late David Harland, one of the world's leading experts in consumer law, with some conclusions (Part 6).

* Professor of Law, University of Utrecht, The Netherlands; formerly Allen Allen and Hemsley fellow at the University of Sydney.

2. *Un peu d'histoire*

'Consumers, by definition, include all of us'. These are the opening words of a Special Message of President Kennedy to the United States Congress in 1962.¹ In this Message, President Kennedy coined four fundamental consumer rights.² The model for this was clearly the 'Four Freedoms; speech of President Roosevelt. From a constitutional point of view, the description as 'fundamental right' does not in itself have any specific value;³ the words rather point to a political value, which they did indeed get, both in the United States and elsewhere.

In 1975, the Council of the European Union issued a preliminary program for a consumer protection and information policy. Echoing President Kennedy,⁴ the Council set out five basic consumer rights:

- (a) the right to protection of health and safety;
- (b) the right to protection of economic interests;
- (c) the right to redress;
- (d) the right to information and education;
- (e) the right of representation (the right to be heard).⁵

This program and its successors have served as a basis for the introduction of a great number of directives and regulations in the area of consumer protection.

Does the European Union have the competence to act in this regard? Before 1991, the consumer was only mentioned in passing in the EC Treaty, without any real significance.⁶ When the well-known 'Product Liability Directive' was arrived at in 1985,⁷ the competence of the EU was still contested. Then came the Treaty of Maastricht, the consumer rose to prominence. As one author put it at the time:

the "elevation of consumer protection to the status of a Community common policy is confirmed by Article 3 (...), which provides that '... the activities of the Community shall include... (o) a contribution to the strengthening of consumer protection'" .⁸

The Treaty of Amsterdam has further solidified the status of consumer protection. The European Constitution — the future of which due to the negative outcome of referenda in France and the Netherlands is highly uncertain — would not have changed this very much.

1 Reprinted by Eike von Hippel, *Verbraucherschutz* (1979) at 225–234.

2 The right to safety, the right to be informed, the right to choose and the right to be heard.

3 Sinai Deutch, is of a different opinion, see: 'Are Consumer Rights Human Rights?' (1994) 32 *Osgoode Hall LJ* 537.

4 Geraint Howells & Thomas Wilhelmsson, *EC Consumer Law* (1997) at 9.

5 *Official Journal* [1975] EU C 92/1.

6 See Malek Radeideh, *Fair Trading in EC Law/Information and Consumer Choice in the Internal Market* (a PhD Groningen, Amsterdam) (2005) 21.

7 See David Harland, 'Products Liability and International Trade Law' (1977) 8 *Syd LR* 358.

8 Stephen Weatherill, *EC Consumer Law and Policy* (1997) 24. See also Stephen Weatherill, *EC Consumer Law and Policy* (2nd ed, 2005) at 5.

3. *European Harmonisation of Private Law*

The consumer law referred to in the previous paragraph contains both private and public law provisions. Surprisingly, the interest of the EU in doing something with private law is more recent than its interest in consumer protection.⁹ Its interest in private law goes back to 11 July 2002, when the Commission published its 'Communication of the Commission to the Council and the European Parliament on Contract Law'.¹⁰ With this Communication, the Commission sought a discussion on the desirability, feasibility and necessity of a European Law of Obligations, not only between academics but also in business circles. To this effect, the Commission first gave an overview of the state of affairs offering four options. The first option is simply do nothing and leave the conclusion of contracts to the market forces, which may arrive at industry-wide model contracts for cross-border transactions. A second option is to promote the development of principles, such as the 'Principles of European Contract Law' by the Lando Commission.¹¹ In this respect, the Commission sees a role for itself and one may also think of European-wide general conditions. A third option is improving the quality of existing European regulation. In this respect, the Commission mentions two examples: the SLIM project — which stands for 'Simpler Legislation for the Internal Market' — and the possibility of extending the scope of application of a number of consumer protection directives to non-consumer transactions. A fourth and last option exists in promoting a text with provisions on general questions of obligations.¹² Here, the Commission is thinking of a directive, regulation or recommendation, which may range from fully optional to wholly mandatory. This last-mentioned mandatory solution would replace domestic law, while an optional regulation would operate alongside. The Commission does not exclude the possibility of even more options.

Those who begin reading the Communication without pre-existing ideas will not fail to be disappointed. But is this all there is? The Communication runs to 64 pages, of which 43 consist of Enclosures. In the remaining 21 pages, the Commission does mention four options, but nowhere does it offer an opinion. Could the Commission not have provided some guidance to the discussion? Yet to end with this impression would not be entirely correct. The major importance of the Communication is that it has put the subject of a European Civil Code on the political agenda. Until the publication of the Communication, the discussion had been almost purely academic; between partisans and antagonists of harmonisation, between those who advocate codification and those who seek a Restatement and between technicians and advocates of a legal cultural identity. The Communication

9 See Martin Vranken, *Fundamentals of European Civil Law* (1997).

10 Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council: On European Contract Law Brussels*, 11 Jul 2001, COM (2001) 398 definitive: <http://europa.eu.int/comm/off/green/index_nl.htm> (24 Jan 2006).

11 A useful compilation of this and other texts is Oliver Radley-Gardner, Hugh Beale, Reinhard Zimmermann & Reiner Schulze (eds), *Fundamental texts on European Private Law* (2003).

12 Commission of the European Communities, above n10 at 19.

has already succeeded in turning a subject which has, so far, only been touched upon by academics, into a political issue on which trade, industry and other pressure groups will and must make their views known.

Which of the four options will be preferred by which groups seems to be self-evident. The Lando Commission, like its sister working group which drafted UNIDROIT's 'Principles for International Commercial Contracts', has always been in favour of a Restatement. The Study Group for a European Civil Code, directed by Christian von Bar, may have opted for a Code (the fourth option). Yet the fact that this group is the heir to the Lando Commission, together with the presence of a fair number of Restatement proponents in its midst, has made a compromise between the two strands plausible. Finally there is Gandolfi's Academy. Like the Lando Commission, is quoted in the Communication. It sees its draft as a draft codification and not as a Restatement, only Gandolfi is not very clear as to how his Code will enter into force: 'le groupe de travail ne s'est pas expressément posé le problème de la voie par le truchement de laquelle l'avant-projet pourra devenir un code en vigueur pour les citoyens de l'Union européenne' (pLVII).¹³ In short, the choice between a Code and a Restatement, that is where the discussion between academics WILL LIE — a solitary legrandist notwithstanding. My own preference rests with a Restatement (the second option). It would be at variance with all forms of respect (*comity*) to force a code down the throats of the English and the Irish. Some representatives of trade and industry will doubtless prefer the option of not doing anything (option 1); others will look ahead and choose between a Code and a Restatement. Ultimately it finally appears useful not to opt for only one solution, but rather to extend the application of a number of directives and to simplify their chosen terminology.

The Communication has already achieved what it purported to do: it has led to a highly interesting discussion. A major event was the conference organised by Society for European Contract Law (SECOLA) in Leuven, in December 2001, just two weeks before the Laeken Summit. The volume of conference papers contains reactions to the Communication from academics including Josef Drexler (who favours total harmonisation); Geraint Howells; Massimo Bianca (who is in charge of the chapter on sales in the Gandolfi group); Christian von Bar ('Even law professors must learn to play in teams'); Mauro Bussani; Jürgen Basedow; Ugo Mattei ('The new European Code should be hard, minimal, not limited to contracts, and process oriented'); Hans-Peter Schwintowski ('A European Civil Code could be a second building stone (after the Euro, EH) on the road towards internalisation of the European idea in the hearts of European citizens'); Roger Van den Bergh ('Forced Harmonisation of Contract Law in Europe: Not to be continued'); Hugh Collins; Norbert Reich; Stefan Grundmann and Wolfgang Kerber; U Drobnig; Walter van Gerven; Jan Smits; Thomas Wilhelmsson; the European Consumer Law Group; and Bernard Tilleman and Bart Du Laing.¹⁴ Other reactions have been published separately.¹⁵

¹³ Giuseppe Gandolfi, *Code Européen des Contrats I* (2001) at LVII.

¹⁴ Stefan Grundmann & Jules Stuyck (eds), *An Academic Green Paper on European Contract Law* (2002).

In 2003, the European Commission, by way of follow-up, presented its 'Action Plan for a More Coherent Contract Law'.¹⁶ The Action Plan does not present a clear option for specific policies, however, it is more transparent than the Commission's 2001 Communication on Contract Law. It proposes a 'mix of non-regulatory and regulatory means'. Besides 'appropriate sector-specific interventions' the Commission contemplates three other kinds of measures: 'to increase the coherence of the EC *acquis* in the area of contract law, to promote the elaboration of EU-wide general contract terms, and to examine further whether problems in the European contract law area may require non-sector-specific solutions such as an optional instrument'. In 2004, the Commission announced a further specification of the measures to be taken.¹⁷ It now seems likely that there will be an optional instrument for at least transborder transactions. The practical value of such an instrument may at first be limited: the Vienna Sales Convention shows that businesspersons are not always interested in taking advantage of 'neutral' international instruments. But the political importance will be large, the instrument serving as a stepping stone for further action. For consumer protection, this development may mean that consumer law will not be incorporated in a separate Consumer Code, but instead, will be integrated in a Civil Code. In Part 5 below, I will come back to this 'threat', as many consumer activists view it.

4. *The Consumer Notion: Europe v Member States*

I now have to deal with another 'threat' to consumer protection which seems even more dangerous, because it comes from within. While the European Union has played a major role in promoting and harmonising consumer law, nation states have also contributed to the establishment of consumer protection. The impetus for has usually been to protect the weaker party in contracting. After the employee, the hire-purchaser and the tenant, it was now the turn of the consumer — and later the patient — to be protected. The protection could take the form of mandatory rule, of imposing form requirements, of setting up consumer protection agencies, of voluntary schemes or other means.

15 See for instance Jacques Laffineur, 'L'évolution du droit Communautaire Relatif aux Contrats de Consommation' (2001–2003) 1 *Revue Européenne de Droit de la Consommation* 19–42; Stephen Weatherill, 'The European Commission's Green Paper on European Contract Law: Context, Content and Constitutionality' (2001) 3/4 *Journal of Consumer Policy* at 339–399.

16 Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council: A More Coherent European Contract Law/An Action Plan*, Brussel 12 February 2003, COM (2003) 68 final; see Dirk Staudenmayer, 'The Commission Action Plan on European Contract Law' (2003) 11 *European Review of Private Law* 113–127.

17 See Dirk Staudenmayer, 'The Way Forward in European Contract Law' (2005) 13 *European Review of Private Law* 95–104; Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council: European Contract Law and the Revision of the acquis: the Way Forward*, Brussel 11 Oct 2004, COM (2004) 651 Final: <http://www.europa.eu.int/comm/off/green/index_en.htm> (24 Jan 2006).

The consumer the legislature had in mind was not necessarily the man on the Clapham Omnibus, but rather a weak person, hardly able to read a contract, and in need of information about every conceivable item. But this is not the consumer notion in the European directives, and especially not in the case-law of the European Court of Justice. Their consumer is the well-advised citizen who wishes to make full use of the internal market.¹⁸ A recent case to illustrate this not on substantive law but rather procedural law was *Gruber v Bay Wa AG*.¹⁹ Here the Court adopted a restrictive consumer notion.²⁰ The Court defined a consumer transaction as a transaction which is concluded by a natural person, who is acting for purposes outside his or her trade or profession, on the one hand, and a party, who is acting for purposes within his or her trade or profession, on the other. This definition is in line with the consumer notion in the various consumer protection directives of the European Union, as well as the 1980 Rome Convention on the Law Applicable to Contractual Obligations. I will now examine the elements of that definition.

A. Purposes Outside His or Her Trade or Profession

The fact that the consumer does not intend to use the object of the transaction personally does not preclude the qualification.²¹ Nor is the transaction disqualified from being characterised as consumer transaction if a consumer makes a financial profit: thus buying shares on the stock exchange may well be a consumer transaction.²²

B. Natural Person

Most consumer protection statutes limit protection to natural persons, but there has always been an argument for extending the protection. In 1995, the Belgian 'Commission d'étude pour la réforme du droit de la consommation' (CERDC), chaired by Thierry Bourgoignie, proposed to extend the notion of consumer to some moral persons:

A legal person is not a consumer, unless it establishes that it does not have nor should have professional competence to acquire or utilise goods or services.²³

This is a somewhat broader definition than the one proposed by Bourgoignie in his 1988 thesis, where only natural persons with a 'chiffre d'affaires global inférieur

18 See Stephen Weatherill, 'The Role of the Informed Consumer in EC Law and Policy' (1994) 2 *Consumer Law Journal* 49.

19 C-464/01: [2005] ECR I-439; [2005] I L Pr 12.

20 On the procedural consumer notion see Peter Mogelvang-Hansen, 'Forbrugerrollen som retligt begreb' in Lars Hedegaard Kristen & Erik Werlauff (eds), *Hyldestskrift til Jorgen Norgaard* (2003) at 527-557.

21 Thierry Bourgoignie, *Éléments Pour une Théorie du, Droit de la Consommation: Au Regard des Développements, du Droit Belge, et du Droit de la Communauté Economique Européenne* (1988) 51.

22 Ibid.

23 CERDC *Propositions pour une Loi Générale sur la Protection des Consommateurs* (1995).

à ... millions de francs' were included.²⁴ The European Court of Justice does not accept this broad interpretation and maintains the restriction to natural persons.²⁵ The only qualification is that moral persons profit from the 'Reflexwirkung' to be mentioned below.

C. *No 'Consumer-to-Consumer' Transactions*

A basic element of a consumer transaction is that on the other side there must be a party who is acting for purposes within his or her trade or profession. Thus, the private person who buys real estate from another private person is not covered by consumer protection rules. This may be different when one private person is represented by a professional (see below).

D. *The Objective versus Subjective Approach*

A well-known issue in consumer protection is to what extent consumers should identify themselves. Is there a consumer sale when the other party did not know, nor should have known, that they contracted with a consumer? The Dutch Civil Code is based on the subjective approach,²⁶ although in academic writing there is some opposition.²⁷

In a recent example, a German seller of second-hand cars wanted to deal only with professionals, so as to escape liability. A consumer acted as an enterprise, but having found a defect sought to invoke consumer protection. The German Supreme Court denied protection in this case finding,

The consumer protection provisions do not apply when upon conclusion of the contract the other party untruthfully acts as a professional and pretends to have a professional interest.²⁸

The European directive on consumer sales also uses this notion of consumer goods. Such an approach is not to be applauded, as what is a consumer good and what is not, is very much a question of fashion.

E. *The Small Business Person*

A major concern of many a legislator is what to do with small business persons. In many regards they are in the same position as consumers, having had no expertise on many issues. Why not extend consumer protection to them? The difficulty is

²⁴ Bourgoignie, above n21 at 61.

²⁵ *Cape Snc v Idealservice Srl*, C—541/99 [2002] All ER (EC) 657, [2003] 1 CMLR 42, [2002] ECR I-9049.

²⁶ A Hartkamp, *Mr C Asser's Handleiding tot de Beoefening van het Nederlands Burgerlijk Recht; Verbintenissenrecht; Vol II; Algemene Leer der Overeenkomsten* (12th ed, 2005) with other references.

²⁷ Jac Hijma, *Asser's Handleiding tot de Beoefening van het Nederlands Burgerlijk Recht; Vol 51; Bijzondere Overeenkomsten: Koop en Ruil* (6th ed, 2001).

²⁸ BGH VIII. Senat, 22 December 2004, *Neue Juristische Wochenschrift* (2005) at 1045; see Axel Halfmeier, 'Widersprüchliches Verhalten als opt-out aus dem Europäischen Verbraucherschutzrecht? – Zugleich Anmerkung zu BGH, Urteil vom 22-12-2004, VIII ZR 91/04' (2005) *European Community Private Law Review* at 184–189.

where to draw the line. Time and again, legislators have tried — and failed — to draw a precise line between small and big. Should it be the number of employees, that is be decisive? Or the assets of the company? This Code therefore refrains from drawing the small business persons into its ambit. Two observations may be made in this regard.

First, consumer protection claims have often served as a catalyst in reforming the law in general, especially contract law. An example is the ‘Package Travel Directive’, which is aimed at protecting consumers, but has been drafted in such a way so as to equally protect professional passengers. The same is true of the ‘Overbooking Regulation’, which, in contrast to the Package Travel Directive, even speaks of ‘passenger’ rather than ‘consumer’.

Second, consumer protection is sometimes accompanied by more general norms which equally apply to business persons. What will now happen in several jurisdictions is that the courts, when applying such general norms, will be influenced by the more specific norms for consumer contracts. A good example is the ‘Reflexwirkung’ accorded to the two black lists by Dutch and German courts when applying the general clause to business-to-business transactions.

F. The Business Transaction Alien to one’s Trade or Profession

In cases where consumer protection is limited to consumers proper, a further opportunity to extend the protection to small business persons in at least some cases arises when the transaction involved is alien to the business person’s trade or profession. This possibility has been advocated by Advocate-General Mischo in the Pinto case, but the European Court has rejected his approach²⁹ in this case, and in later judgments.³⁰ On the other hand, this approach has been accepted in some jurisdictions, such as France³¹ and Italy.³² This is one example of a growing divergence between the European Court of Justice and national courts as to the notion of consumer.

G. Partly Trade

If a contract relates only partly to a trade or profession, the consumer protection should be applied if the person is acting ‘primarily outside his trade or profession’.³³

H. Agents

A question will sometimes arise where a party on either side is a private person, but is represented by a professional, such as an agent, broker, or commissioner. For the case of representation of the seller, the Dutch Civil Code in Article 7:5(2) lays down:

29 *France v Patrice Di Pinto* case C-361/89: [1991] ECR I-1189 [1993] CMLR 399.

30 *Benincasa v Dentalkit Srl*, case C-269/95: [1997] ECR I-3767, [1997] ILPr 559.

31 Cour de cassation 6 janvier 1993, *JurisClasseur Périodique* 27 January 1993 (Actualités).

32 Tribunale da Roma 20 October 1999, *Foro Italiano* 2/2000.

33 Howells & Wilhelmson, above n4 at 3.

Where the thing is sold by a procurator acting in the course of a profession or business, the sale is considered to be a consumer sale, unless, at the time of entering into the contract, the buyer knows that the principal does not act in the course of a profession or business.

5. *Place of the Rules: Civil Code v Consumer Code*

The reaction of Member States to the notion of consumer has been ambivalent. Some States have regarded consumer legislation as something temporary, to be dealt with in special legislation and not by way of a Civil Code, which should be *aere perennius* and uncontaminated by such fads. Others have integrated the consumer notion in their Codes or general statutes. A recent example of the first approach is Italy.³⁴ An example of the second integration model is Germany, with its 2002 *Schuldrechtsreform*.

In academic circles there is an ongoing debate concerning the position of consumer protection. In Germany, Joerges argues that Europe is now at an important point: either consumer protection must be further worked out into a coherent system or it should be incorporated on equal footing in a Civil Code.³⁵ Several authors have opted for the first option. In France they include Vogel;³⁶ in Germany, Frotscher,³⁷ Rösler³⁸ and Wiedenmann;³⁹ in Italy, Amato;⁴⁰ in Lithuania Ravlusevicius;⁴¹ and in The Netherlands, Van Boom.⁴² Personally, I have a strong preference for the second solution. It keeps an important part of civil law in the Civil Code, and contributes to acceptance of the idea that freedom of contract is no longer the only paradigm of contract law.⁴³ In Austria, this preference is shared by Lurger;⁴⁴ in Hungary by Vékás;⁴⁵ in Slovakia by Rak and

34 *Decreto Legislativo Recante il Codice del Consumo, a Norma dell'articolo 7 Della Legge 29 luglio, 2003 n229*: <http://213.175.14.65/pdf_upload/documenti/phpn1yjOL.pdf>.

35 Christian Joerges, 'On the Legitimacy of Europeanising Europe's Private Law' *Frankfurter Rundschau* (5 November 2002); also Christian Joerges, 'On the Legitimacy of Europeanising Europe's Private Law' (2002) 2 *Global Jurist*.

36 Louis Vogel, in 'Recodification Civile et Renouveau des Sources Internes' *Le Code Civil 1804-2004: Livre du Bicentenaire* (2004) at 168.

37 Pierre Frotscher, *Verbraucherschutz beim Kauf beweglicher Sachen* (2004).

38 Hannes Rösler, *Europäisches Konsumentenvertragsrecht: Grundkonzeption, Prinzipien und Fortentwicklung* (2004) at 247-250, 291-294.

39 Kai Udo Wiedenmann, *Verbraucherleitbilder und Verbraucherbegriff im deutschen und europäischen Privatrecht: Eine Untersuchung zur Störung der Vertragsparität im Verbraucher-Unternehmer-Verhältnis und den Instrumenten zu deren Kompensation* (2004).

40 Cristina Amato, *Per un diritto europeo dei contratti con i consumatori: Problemi e tecniche di attuazione della legislazione comunitaria nell'ordinamento italiano e nel Regno Unito* (2003).

41 Pavel Ravlusevicius, *Umsetzungskonzepte der EG-Verbraucherschutzrichtlinien* (2002).

42 Willem van Boom, 'Algemene en Bijzondere Regelingen in het Vermogensrecht' *RM Themis* (2003) at 297-306.

43 Ewoud Hondius, 'Consumer Law and Private Law: the Case for Integration' in Wolfgang Heusel (ed), *Neues europäisches Vertragsrecht und Verbraucherschutz* (1999) at 19-38.

44 Brigitta Lurger, *Grundfragen der Vereinheitlichung des Vertragsrechts in der Europäischen Union* (2002).

45 Lajos Vékás, 'Über die anhängige Reform des ungarischen Zivilgesetzbuches' *Zeitschrift für Rechtsvergleichung, Internationales Privatrecht und Europarecht* (2004) at 65-73.

Cupaníková,⁴⁶ and in Spain by Cámara Lapuente.⁴⁷ The Study Group for a European Civil Code has also expressed a preference for the second solution. This solution regards consumer legislation as something for the common good, especially on the European scale, where there is so much regulation of consumer protection. Since consumer contracts have to do with everyday relations between citizens, a Civil Code seems the natural place to regulate it.

6. *Conclusions*

These are fascinating times for all of those who are interested in consumer law. In the European Union, consumer protection has proven to be a most successful catalyst for law reform. Two threats to this development were analysed in this paper: first, the European Court of Justice is increasingly interpreting the consumer notion in a way which ignores the protection of the really weak, illiterate and poor consumer. Also, small business persons acting outside their expertise are not included. The forthcoming revision of the *acquis communautaire* of consumer protection should provide the opportunity to challenge this development. A second threat, at least according to several authors, is the debate on a European Civil Code: should consumer protection measures be incorporated in a Consumer Code, or should the private law rules be incorporated in a Civil Code? In this essay, I have expressed a strong preference for the latter option. Taking out regulation of consumer contracts would mean that Civil Codes would be deprived of most of their content. Conversely, the incorporation of consumer protection and other protection rules in a Civil Code ensures that such Codes do not become bulwark of laissez-faire liberalism.

46 Pavol Rak & Petra Cupaníková, 'EU-Recht – Neuer Konsumentenschutz in der Slowakischen Republik' in *Eastlex* (2000) at 38–40.

47 Sergio Cámara Lapuente, 'EU Contract and Consumer Law: True Coordination?' in Santiago Espiau Espiau & Antoni Vaquer Aloy (eds), *Bases de un Derecho Contractual Europeo: Bases of a European Contract Law* (2003) at 577–587.