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THE RELEVANCE OF THE DIRECTIVES` ELEVANCE OF THE DIRECTIVES` RECITALS FOR THE INTERPRETATION OF THE EU-LAW – THE STRUGGLE ON THE NOTION OF ‘CONSUMER’

Why is the understanding of the notion of ‘consumer’ important in the context of European Private Law? In practice the word ‘consumer’ is used in various meanings. In particular the notion of ‘consumer’ as it is known in law varies significantly from the concept of consumer as used in marketing and sociology. So, in law a person who is a consumer is entitled to extend legal protection in relations with traders. This is because of the trader’s stronger position. In order to delimit the circle of those persons that are entitled to extend legal protection, a precise definition of consumer is essential [1, 44-53].

In current EU consumer acquis⁵⁶ the notion of consumer has been specified separately in each adopted instrument. Thus, the notion has been defined in several directives in the area of contract law.⁵⁷ But the consumer has also been defined in the area of procedural law, in the regulations Brussels I. Since those definitions do not entirely coincide, there is a struggle on the notion of consumer.

In 2002 the European Research Group on the Existing European Community Private Law was found. As a reaction on activities of EU institutions in the field of European Contract Law, the so called Acquis-Group targeted a systematic arrangement of existing Community Law which will help to elucidate the common structures of the emerging Community Private Law. The research of the Acquis-Group was published as ‘Principles of the Existing EC Contract Law’ (ACQP).

However, this wording has been highly criticized by Jansen and Zimmermann [2, 505-514], two German Law Professors. Under this norm a person would also be qualified as a consumer if he entered into a contract intended for purposes which are in part within his business activity that in fact plays a minor but not an irrelevant role

⁵⁶ Acquis also known as *aquiscommunautaire* or *community acquis* means the accumulated legislation, legal acts and court decisions which constitute the body of European Union Law

⁵⁷ Article 2 of the original doorstep selling directive (85/577/EEC) and Article 2 (2) of the distance contracts directive (97/7/EC); Article 2 (b) of the unfair terms directive (93/13/EEC); Article 1 (2) a) of the consumer sales directive (99/44/EC); Article 2 (e) of the electronic commerce directive (2000/31/EC); Article 2 e) of the price indication directive (98/6/EC); Article 2 (1) f) of the new timeshare directive (2008/122/EC); Article 2 (D) of the distance marketing of consumer financial services directive (2002/65/EC); Article 2 (a) of the unfair commercial practices directive (2005/29); Article 4 (11) of the new payment services directive (2007/64/EC); Article 2 (4) of the package travel directive (90/314/EEC); Article 3 (a) of the original consumer credit directive and Article 3 (a) of the new consumer credit directive (2008/48/EC).

[3, 1113-1117]. Jansen and Zimmermann pointed out that the European Court of Justice (ECJ) came to a different result, namely in the case Gruber [4, 8].

Maybe a sufficient definition of consumer can be found in the substantive Community Acquis. The Consumer Rights Directive does not result in a precise clarification. Art. 2 (1) Consumer Rights Directive [5] defines the notion of consumer *prima facie* in a traditional manner as it is the case with most of the directions: consumer means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession.

So here we can see that on the one hand the exact wording of the directive's text is formulated very narrow and close. Only persons who are acting for purposes which are outside their trade, business or profession are entitled to extend legal protection. On the other hand, the recital is formulated more sophisticated. Following that, a person should be considered as a consumer even if this person concluded for purposes partly within their trade and this purpose is not predominant in the overall context of the contract. Remembering that in the Gruber-Case the area of the building used for personal purposes was slightly more than 60% of the total area, the trade purpose is so limited as not to be predominant. This is why Mr. Gruber would be treated as a consumer here. The same pattern we can see in the Consumer Credit Directive as well as in the Regulation on online dispute resolution for consumer disputes [6].

This is leading back to the question of the relevance of the directives' recitals for the interpretation of EU-Law. The recitals could function on a supplementary basis and have a completing effect. However, then the question arises on why the recitals had not been laid down directly in the directives' text. A reason could be the political consent of all member states that could have been reached easier with this construction of a very narrow definition in the directives' text and a more sophisticated wording of the recitals with the result of more space for interpretation [7].

In summary it can be concluded that on the one hand there exists these narrow and close formulated definitions of a consumer in the directives' texts.

On the other hand there are the directives' recitals with a very broad definition of a consumer. And last but not least the court decision of the Gruber-Case says that a person who concludes a dual use contract is only to be considered as a consumer if the trade purpose is marginal.

As a conclusion, in my opinion the recitals cannot be ignored. To be sure, one could argue that in cases of dual use with a minor trade purpose the parties that are contracting could be in identical positions. The person, who is supposed to be a consumer or wants to be treated as one, does not have to be in a weaker position. But in those specific contracts with a predominant purpose for private use all reasons for extend legal protection are given.

Just because a coffee machine that is mainly used for the buyer himself in the buyer's house and only occasionally for customers of his next door business, cannot be lead to an exclusion of extend legal protection. However, we still have to wait for a future decision of the European Court of Justice on whether the notion of consumer as it has been defined in the Gruber-Case can also be transferred into substantive law cases.

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ДЕМОГРАФИЧЕСКАЯ ЭКСПЕРТИЗА ПРОЕКТОВ НОРМАТИВНЫХ ПРАВОВЫХ АКТОВ В УСЛОВИЯХ ПЕРЕОРИЕНТАЦИИ СОЦИАЛЬНО-ОБЕСПЕЧИТЕЛЬНЫХ ОТНОШЕНИЙ

Реализация мероприятий по обеспечению демографической безопасности в Республике Беларусь предусматривалась рядом программных документов: программами социально-экономического развития Республики Беларусь на 2001 – 2005 гг., 2006 – 2010 гг., 2011 – 2015 гг.; Концепцией национальной безопасности Республики Беларусь 1995 г., 2001 г. и 2010 г.; Национальной программой демографической безопасности Республики Беларусь на 2007 – 2010 гг., 2011 – 2015 гг.; и другими. Однако, в целях совершенствования программно-целевого метода при формировании и выполнении государственных программ, а также в связи с переходом с 2016 г. на бюджетирование, ориентированное на результат, Программа демографической безопасности оказалась в структуре программы здравоохранения и дополнила ее содержание. Необходимость объединения указанных программ обусловлена задачей по рациональному использованию бюджетных средств, а также несовершенством механизма составления и реализации государственных программ и проектов.