



CENTRE FOR THE STUDY OF
EUROPEAN CONTRACT LAW

Conference

A New Deal for Civil Justice? The New Deal for Consumers and the Justiciability of EU Consumer Rights

11-12 April 2019, University of Amsterdam

The 2019 CSECL conference revolves around the New Deal for Consumers that was proposed by the European Commission on 11 April 2018. It focuses on issues of civil justice that the New Deal aims to address – as well as, crucially, the questions it appears to *raise*. The workshop will bring together researchers interested in (the future of) European private law, civil procedure, consumer law and, possibly, others with an interest in the enforcement of EU law and EU constitutional law.

Theme

Over the past years, it has become increasingly clear that the realization of the level of consumer protection envisaged by EU law – i.e. the *justiciability* of consumer rights – is heavily dependent on the establishment of effective enforcement mechanisms. With most directives leaving substantive remedies and procedural matters in the hands of the Member States, the (CJ)EU has emphasized the need for minimum requirements (the principles of equivalence and effectiveness and effective judicial protection) and harmonized procedures to enforce and protect consumer rights at the national level. Examples of this tendency are multiple, ranging from the directive on antitrust damages actions to the injunctions directive, the consumer ODR regulation and the ADR directive. The CJEU's case law in this direction is also abundant and well-known (from the *Aziz* saga to remedies for non-conform goods).

Therefore, it should perhaps not come as a surprise that the New Deal for Consumers, under the promise of modernizing consumer protection, mainly concentrates on enforcement – according to the Commission's own press release, securing "that all European consumers fully benefit from their rights under Union law". While proposing to introduce a "right to a remedy" in the field of unfair commercial practices, thus intervening also in the field of substantive remedies, the Commission's legislative proposals mainly concentrate on procedural innovations, presented as amendments to or reformulations of existing directives.

This all begs the question of what and whom this increased effectiveness is for. According to Commissioner Jourova, *In a globalised world where the big companies have a huge advantage over individual consumers we need to level the odds*. Given the concrete undertakings of these directives, ranging from representative actions for redress to sanctions, it is not immediately clear that it is the rights of individual consumers the Commission has in mind.

This triggers a discussion on which directions the creeping harmonization of procedure that the package seems to introduce will take – possibly including the further instrumentalization of national procedural law to ends that national courts may not always be entirely aware of. It also gives rise, once more, to questions concerning the role of individual consumers' rights in the EU's strategy: is this yet another example of the Commission's "justice for growth" approach, or is it a move towards a more rights-based approach?

Programme

Thursday 11 April 2019

- 12:30 – 13:00 Registration and welcome
- 13:00 Opening speech: Colin Scott, University College Dublin
- 13:30 – 15:00 **Panel I: A European collective redress mechanism**
- **Consumer collective redress and access to justice for consumers in the EU: a reality check**
Maria Ioannidou, Queen Mary University of London
 - **Collective interests of consumers: new definition, new weaknesses**
Hanna Misiak, University of Gdańsk/University of Pisa
 - Discussant TBA
- 15:00 – 15:30 Coffee break
- 15:30 – 17:00 **Panel I (continuation)**
- **The EU-style representative actions: avoiding abuse or exacerbating inequality?**
Eleni Kaprou, Brunel University London
 - **More efficient collective redress mechanisms? Ideas based on the Visegrád 4 experiences**
Rita Simon, Czech Academy of Sciences
 - Discussant TBA
- 17:00 Drinks

Friday 12 April 2019

- 9:00 – 10:30 **Panel II: Between redress and sanctions**
- **Collective resolution of consumer disputes in the financial services sector and the EU draft directive on representative actions**
Iris Benöhr, Queen Mary University of London
 - **Effective, proportionate and deterrent? Exploring civil law sanctions on breaches of EU consumer regulation under Dutch law**
Charlotte Pavillon, University of Groningen
 - Discussant TBA
- 10:30 – 10:45 Coffee break
- 10:45 – 12:15 **Panel III: Alternative and online dispute resolution**
- **The consumer ADR/ODR system in Spain and Portugal after the European Regulatory Framework: formal adaptation or real transformation?**
Cátia Marques Cebola, Polytechnic Institute of Leiria
 - **Success or failure? Consumer ODR platforms in Brazil and Europe**
Rafaela Nogueira, FGV Direito Rio
Maria José Schmidt-Kessen, Copenhagen Business School
Marta Cantero, CUNEF Madrid/University of Tartu
 - Discussant TBA
- 12:15 – 12:45 Closing speech: Eva Storskrubb, Uppsala University