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研究課題名(和文)ヨーロッパ共通売買法 消費者にとって正しい方向か？

研究課題名(英文)The CESL - The Right Way to Go for Consumers?

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研究成果の概要(和文)：近年、消費者保護を強化しようというスローガンは、法律のおよび経済的、社会的視点において、またその交錯領域において世界的な広がりを持っている。世界中の政策決定者や法学者は、過去数十年間、その様々なメカニズムと方法について議論してきており、成果を上げることもあったし、そうでないこともあった。とりわけ、EUと日本において、“消費者保護法”は、これまで以上にその重要性が増してきている分野である。EUの様々な機関や加盟国の中で、実体法および手続法の両方に関する問題に関して、“最善の解決策”を見つけるために不断の努力が行われてきた。

研究成果の概要(英文)：Strengthening the consumer is a trendy phrase in today's world, be it in a legal, economic and/or social context. Decision-makers and legal scholars around the globe have been debating various mechanisms and methods over the last decades, sometimes with more, sometimes with less success. Especially in the EU and Japan the field of “Consumer Protection Law” is gaining more and more importance again. Within the EU various institutions and member states have intensified their efforts in finding the “best possible solution” with regards to both: substantive law issues and procedural law issues.

研究分野：社会科学

キーワード：Consumer Law

1. 研究開始当初の背景

The situation with respect to consumer law in EU has been under development since the 1980s. Efforts to strengthen consumer law at the EU level have increased ever since. The central question in this respect was how to enhance the internal market in general and B2C cross-border transactions in particular. Put differently: What is the most suitable legal instrument to stimulate consumer transactions in the EU?

2. 研究の目的

The research focused on the Proposal for a Regulation on a **Common European Sales Law**.

If and once adopted, the Regulation would have introduce an innovative landmark mechanism: a fully harmonized, alternative sales law regime at national level (i.e. the Common European Sales Law or CESL) applicable primarily in trans-border situations. The CESL would have covered more sales contract related matters than any existing pan-European instrument in a single set of rules. I critically analyzed the proposed mechanism in more detail to find out **if the CESL would have really been in the best interest for consumers**, as claimed by the Commission. The research **went beyond existing studies**, as it (also) took into account the position of various consumer interest representative groups.

1. Scientific background of the research	2. What will be elucidated?	3. Scientific characteristics, originality, expected achievements
<ul style="list-style-type: none"> ➤ The Common European Sales Law (CESL) was proposed on October 11, 2011. ➤ The CESL has been heavily debated in the EU. ➤ The consequences the CESL would have for consumers were not clearly foreseeable at moment I started my research. 	<ul style="list-style-type: none"> ➤ The research critically examined the CESL from the viewpoint of consumers. ➤ It dealt with the most striking possible consequences for consumers and ambiguities in the argumentation of the Commission. 	<ul style="list-style-type: none"> ➤ Unlike most publications in the context of the CESL the research focused on the true impact for consumers. ➤ With more than 500 million people living in the EU and many more visiting / shopping from abroad, such an analysis was of utmost importance.

3. 研究の方法

The research project was carried out over a

period of three years, starting in April 2013 and ending in March 2016. The project was divided into the following three stages: (1) preparation and transition stage, (2) main implementation

stage and (3) sharp tuning, publication and dissemination stage. Stage (1) took approximately 6 months, stage (2) 21 months and

stage (3) 9 months.

Stage (1): Preparation and Transition Phase (April – September 2013)	Stage (2): Main Implementation Phase (October 2013 – June 2015)	Stage (3): Sharp Tuning, Publication and Dissemination Phase (July 2015 – March 2016)
<ul style="list-style-type: none"> ➤ collection of literature & data ➤ preparation of questionnaire ➤ initial contacts with target groups (consumer association, public agencies) 	<ul style="list-style-type: none"> ➤ literature & data analysis ➤ personal contact with target groups ➤ evaluation of questionnaire answers ➤ drafting of manuscript and publication proposal ➤ contacts with publishers 	<ul style="list-style-type: none"> ➤ concluding a deal with CUP ➤ finalization of manuscript draft (proof-reading, layout adjustments, ...) ➤ publication process ➤ result dissemination

4 . 研究成果

Since the 1970s the European Union has increased its efforts to regulate consumer issues at a pan-EU level. Roughly two and a half years ago, on 22 May 2012, the European Commission issued its ‘European Consumer Agenda’, which thus far is the most comprehensive policy strategy paper in the field of EU consumer law. Ambitiously subtitled ‘Boosting confidence and growth’ it aims to enhance consumer confidence in the (cross-border) market. To achieve this, the strategy paper includes a set of key measures divided into four categories: ‘Improving Consumer Safety’, ‘Enhancing Knowledge’, ‘Improving Implementation, Stepping up Enforcement and Securing Redress’ and ‘Aligning Rights and Key Policies to Economic and Societal Change’. The 2014 Report on Consumer Policy (with an evaluation of the

two-year-period of January 2012 to December 2013) came to the conclusion that most of the key measures of the European Consumer Agenda had (at least to some extent) been successfully tackled by new and emerging EU legislation.

With my research and the main outcome of it, a monograph with CUP titled *European Consumer Access to Justice* I critically examined the attempts at the EU level to increase consumer confidence in the (cross-border) market by evaluating both existing and planned EU consumer laws in selected areas. The research rested on the assumption that economic growth is inextricably linked with the question of whether consumers can – and actually do – trust in the market and the legal framework that aims to create a true level playing field among the actors involved in business-to-consumer contracts. To assess the situation I introduced the phrase

‘access to justice 2.0’. This term tries to reinterpret the traditional (procedural) access to justice concept in a way that connects procedural law and substantive law issues as seen from the perspective of ‘value-oriented justice’ (as opposed to ‘non-valuing justice’ – to be equitable with the ‘technical’ judicial apparatus). It touches upon issues such as procedural and substantive justice and further covers wider questions of the social justice debate.

With my research I tried to argue that most of the initiatives launched at the EU level have largely failed to achieve true consumer trust in the market and highlighted the reasons for this dilemma. I *inter alia* elucidated that most procedural devices introduced to safeguard consumer rights have failed to give due account of the essential ingredients for success, and further explained why increased full harmonisation of national consumer laws has been counterproductive from the viewpoint of consumer confidence. I also critically commented on the plan to introduce the Common European Sales Law, a device that aimed to introduce a secondary national sales law regime in each of the Member States via a standardised set of European sales law provisions. At the same time the study introduced possible alternative approaches that should seriously be considered to improve the overall situation for the sake of both consumers and businesses.

With respect to substantive consumer laws, I mainly questioned whether EU policy-makers with their current efforts (that focus on centralised regulation at an increasingly fully harmonised level and as comprehensively as possible) could really achieve true consumer confidence, which is essential to strengthen the

Internal Market. In this respect, I touched upon numerous issues and explained that these attempts do not always necessarily serve this endeavour, i.e., the enhancement of consumers’ trust in the Internal Market.

I arrived at the general conclusion that the most suitable way to strengthen the Internal Market requires a different solution. The focus should be on properly addressing consumer interests and consumer needs. Consumer empowerment should be understood as overcoming consumer distrust in and consumer frustration regarding cross-border B2C trade by achieving consumer access to justice 2.0. That is, ensuring that consumer interests are protected in the most suitable way from both a procedural and substantive legal point of view and supporting traders in their attempt to engage more actively in cross-border B2C trade are not mutually exclusive targets. Not only consumers but also clearly traders could benefit from a mitigation of consumer disincentives with respect to cross-border B2C transactions. As explained in earlier chapters, both the facilitating intermediaries approach and legislative approach could contribute to this goal, ideally in a combined way.

In the course of the study I have identified several core issues that must be taken into account when choosing an alternative approach. The most important tasks in this respect include the guarantee of appropriate, efficient and fast consumer support (facilitating intermediaries approach) on the one hand and on the other, high-level minimum harmonised substantive standards and principles, paired with an effectual enforcement and compensation regime to guarantee legal compliance (legislative approach).

In addition to these targets, EU consumer legislation also should remember to support trailing Member States, which need to ‘catch up’ in the field of consumer protection. This should be achieved without abolishing the competitive legislative market for national and EU policy-makers via maximum harmonisation. If the Commission and the Union legislator are ready and willing to follow the advice given in my study, it can be expected that EU consumer law could really be on the right track to effectively contribute to both consumer confidence and the enhancement of the Internal Market.

5 . 主な発表論文等

(研究代表者、研究分担者及び連携研究者には下線)

[雑誌論文] (計 8 件)

S. Wrbka, The Austrian Implementation of the Consumer Rights Directive – an Overview, *Hosei Kenkyu*, 81 (2014), 110-30

S. Wrbka, 消費者代表とヨーロッパ共通売買法の草案作成 – 欧州消費者同盟の役割 [Interest Representation and the Common European Sales Law – the Impact of BEUC], *EUIJ-Kyushu Review*, 3 (2013), 69-95

S. Wrbka, 消費者とヨーロッパ共通売買法規則提案—どの道もローマに通じないのか(2) [Consumers, the Proposal for a Regulation on a Common European Sales Law and the Rome I Regulation, Part 2], *Kokusai Shoji Homu [Journal of the Japanese Institute of International Business Law]*, 40 (2012), 1529-38

S. Wrbka, ヨーロッパ共通売買法規則提案-消費者保護のための正しい方向性か(2) [Consumer Protection under the Proposed Common European Sales Law, Part 2], *Minshoho Zasshi [Journal of Civil and Commercial Law]*, 146 (2012), 491-511

S. Wrbka, 消費者とヨーロッパ共通売買法規則提案—どの道もローマに通じないのか(1) [Consumers, the Proposal for a Regulation on a Common European Sales Law and the Rome I Regulation, Part 1], *Kokusai Shoji Homu [Journal of the Japanese Institute of International Business Law]*, 40 (2012), 1317-26

S. Wrbka, ヨーロッパ共通売買法規則提案-消費者保護のための正しい方向性か(1) [Consumer Protection under the Proposed Common European Sales Law, Part 1], *Minshoho Zasshi [Journal of Civil and Commercial Law]*, 146 (2012), 367-85

S. Wrbka, Consumers and the Proposal for an Optional Common European Sales Law – No Roads Lead to Rome?, *Kyushu University Legal Research Bulletin*, (2012) (online publication)

S. Wrbka, The Proposal for an Optional Common European Sales Law – A Step in the Right Direction for Consumer Protection?, *EUIJ-Kyushu Review*, 2 (2012), 1-26

[学会発表] (計 5 件)

Current Challenges for Austrian and German Warranty Laws, Stefan Wrbka, 特別研究会, 於関西大学 (大阪府)

The True Challenges for European Consumer Law, Stefan Wrbka, 日本消費者法学会, 於龍谷大学 (京都府)

European Consumer Law Revisited, Stefan Wrbka, 6th Diploma Course of the Thai Judicial Training Institute, 於九州大学 (福岡県)

The Planned Common European Sales Law, Stefan Wrbka, 5th Diploma Course of the Thai Judicial Training Institute, 於九州大学 (福岡県)

The Dilemma of European Consumer Representation in Deliberative Networks – the Democratic Deficit in the Context of the Drafting of the Common European Sales Law, Stefan Wrbka, 8th Annual Kyushu University International Law Conference, 於九州大学 (福岡県)

{ 図書 } (計 2 件)

S. Wrbka, *European Consumer Access to Justice Revisited* (Cambridge University Press, 2015), 400 pages

M. Fenwick, S. Van Uytsel and S. Wrbka (eds.), *Networked Governance, Transnational Business & the Law* (Springer, 2014), 313 pages

6 . 研究組織

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