DISCRIMINATION OF CONSUMERS IN THE DIGITAL SINGLE MARKET

Outline of Study

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Prof. Dr. Hans Schulte-Nölke
European Legal Studies Institute Osnabrück
INTRODUCTION

Article 20 Services Directive 2006/123/EC

Non-discrimination

(1) Member States shall ensure that the recipient is not made subject to discriminatory requirements based on his nationality or place of residence.

=> addresses different treatment by public authorities

(2) Member States shall ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria.

=> addresses different treatment by service providers
• **Some empirical data**
  – Interviews of consumer organisations
  – Interviews of businesses
  – Market screening

• **Types of consumer discrimination**
  – Impossibility to make or refusal to take orders
  – Different conditions for customers from other (Member) States, e.g. payment methods, delivery costs, limitation of delivery options
  – Parallel commercial structures and redirection to a satellite e-shop (sometimes with different, but not necessarily higher prices, lesser choice or variations in quality)

• **Reasons /justification**
  – More expensive or otherwise more burdensome delivery
  – Difficulties in enforcing payment
  – Language barriers (e.g. instruction, execution, complaint handling)
  – Lack of legal certainty, in particular when supplying consumers in other Member States
  – Practical difficulties (e.g. for travel services which include transport, services which require a visit)
  – Different preferences of customers
  – Making use of higher level of prices

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CURRENT LEGAL FRAMEWORK

• EU Law
  ➢ Primary Law, in particular freedom of movement
  ➢ Services Directive
  ➢ Private International Law and differences of the national laws
  ➢ Intellectual Property Law
  ➢ Competition Law
  ➢ Other areas

• Implementation in Member States and Enforcement

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ARTICLE 20 (2) SERVICES DIRECTIVE
• Freedom of business v. customers’ right not to be discriminated
• Scope of application
  ➢ Material Scope (Which Services?)
  ➢ Personal Scope (Who is protected?)
• ‘General conditions made available to the public at large’
• Nationality and residence
• ‘Differences in the conditions of access’
• ‘Directly justified by objective criteria’

⇒ Simply a programmatic statement or ‘hard and fast rule’?
⇒ Transparency rule (‘comply or explain’)?

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PRIVATE INTERNATIONAL LAW - BRUSSELS I AND ROME I

- Divergences in consumer protection and contract law rules as reasons for discrimination
- EU legislation and remaining divergences
- Determination of the competent court
- Determination of the applicable law
- The mechanism of Art. 6 (2) Rome I Reg.
- Recognition and enforcement of judgments
- Alternative Dispute Resolution (ADR/ODR) as a way forward?
PROPOSALS FOR EU ACTION

• Proposals related to clarification of current regulatory framework
• Proposals related to information and dissemination
• Proposals related to enforcement
• Proposals related to improving / revising the regulatory framework
Prof. Dr. Hans Schulte-Nölke
European Legal Studies Institute Osnabrück
schulte-noelke@uni-osnabrueck.de