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EDITORIAL

## Foreword

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On 31 May and 1 June 2018 the Center for Enterprise Liability of the University of Copenhagen's Faculty of Law hosted a seminar on *The Responsible Consumer in the Digital Age – International and Nordic Perspectives on Consumer Financial Protection*. Scholars from several European Countries, the US and Africa presented papers. This was a genuine international seminar.

With this foreword we aim to give the reader of this issue just a flavor of the intellectually extremely exciting event during which participants were nailed to their chair (unless they stood up to speak) notwithstanding the probably most beautiful spring days in Copenhagen since many years. Thus all papers are a worthwhile read.

The programme was very balanced and this issue shows it. The seminar started with two general presentations, one on the Consumer in the Digital Economy (Hans Micklitz) looking into the open issues that remain to be solved in a world governed by the algorithmic consumer and one on the Commission's New Deal (Jules Stuyck) which demonstrates how the EU is trying to integrate the digital challenge in the existing body of consumer law. The two general presentations set the broader frame for the second part of the conference which was mainly though not exclusively focused on consumer finance. The finance related presentations were organized around six panels: Consumer Protection in Capital markets, Consumer Financial Protection in the Digital Age, Consumer Financial Protection and Liability Issues, Consumer Financial Protection Enforcement, Consumer Financial Protection in the Mortgage Sector and Consumer-Debtor Protection: Debt Collecting Practices and Dispute Resolution mechanisms. Day 2 kicked off with a Nordic Round Table with representatives from the Danish, Norwegian and Icelandic Consumer Agencies.

The EU Consumer Financial Services Action Plan 2017 spelled out four basic principles: to increase consumer trust and empower consumers, to reduce legal and regulatory obstacles affecting businesses, to support the development of an innovative digital world and, finally, the recognition of technology neutrality.

In recent years the EU has adopted or proposed several measures modernizing the consumer acquis, both substantively and procedurally. The new CPC (Cooperation) Regulation 2017/2394, taken as a result of the 2015 Communication on A Digital Market Strategy and which is particularly important for the financial sector, the proposals on Digital Contracts and Digital Content of end 2015 (still not adopted) and – at the time of the seminar – the brand new “New Deal” for Consumers, which is the follow up of the “Refit” of directives: the Unfair Commercial Practices Directive 2005, the Consumer Rights Directive 2011, Unfair Contract terms Directive 1993, the Price Indication Directive 1998 and the Injunctions Directive 2009. It is striking that the Commission proposes mandatory pecuniary penalties (like in competition law) for infringements of the provisions of the UCPD and the CRD. Consumer protection should also be enhanced by adding to the existing possibility of actions for injunctive relief collective actions for damages (that also already exist in competition law). It is believed that all these measures will in particular improve the legal protection of the consumer of financial services.

These initiatives show that the European Union wishes to tackle issues in the financial sector and in the digital era with general, non-sector or technology specific rules. That may also be the case with FinTech issues. However FinTech may lead (because of economies of scale and other reasons) to a concentration of power by big communication technology firms (and big data). Therefore they will affect also consumer policy and law as a whole. The biggest changes are these of the consumption model of financial services: online banking apps as personal advisers, peer to peer insurance models, etc. As a result of these developments the question arises whether technology firms will not replace banks in the financial market place. There is also

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cause for concern for the vulnerable consumer; Will Fin Tech act as a driver for access to financial services or will more consumers be excluded as a result of data mining?

The answer to the ever greater complexification of the law and the rapidity of technological development does probably not reside in even more complex and detailed rules that will inevitably lag behind, but rather in the design of more general and flexible ones. And of course one should always keep in mind that the law has its limits. The so far unsolved question which underpins the role and function of the consumer in the digital world is how politics should deal with consumer algorithms. In particular FinTech is using big data analytics for drawing conclusions on the consumer's creditworthiness out of the way the consumer writes, communicates and speaks through the internet. Is this acceptable and legitimate? The call for more transparency on those who write the algorithms and use them, for more accountability and for fairness is getting louder and louder. Neither the New Deal nor the EU Consumer Financial Services Action Plan 2017 even touch upon these cross-cutting and highly sensitive issues.

The very rich discussions during the seminar, involving speakers and many participants, have shown that the digital age poses new threats to effective consumer protection of financial services as a result of the greater facility to process personal data, which at the same time undoubtedly offers new possibilities to enhance consumer protection. A good example of the latter is the improvement of consumer redress by online dispute resolution mechanisms. As often the public enforcement model of Nordic countries is exemplary.

The seminar has also shown that consumer law in the financial sector cannot be seen in isolation. In fact it is strongly intertwined with other branches of the law, in particular privacy protection (GDPR) and bankruptcy, sureties and insolvency law. Traditional subjects, in particular credit (including mortgage credit) remain a major concern for effective consumer protection; information, proper conduct and the "poor pay more" issue. The contributions to the issue demonstrate the fast changing development of the consumer and consumer law in the world of digital finance. The exponential technological development remains a major challenge to the linear thinking of lawyers, building the future on the experience of the past.

## Competing Interests

The authors have no competing interests to declare.

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