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Party Autonomy and the Role of Information in the Internal Market

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Edited by

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Stephen Weatherill



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Preface

Examination of Party Autonomy and its limits has always raised fundamental questions in national contract and private law. Today the limits are fixed mostly at the European level. The questions have to be discussed at the European level anew. Not only the level at which the question is regulated has changed but also the approach is different. The concentration on information solutions which enhance and leave more space to party autonomy is a fundamentally new approach to this core issue and is typical of Community legislation. The advantages and the problems of such an approach demand careful and detailed consideration. It is in fact the question of party autonomy and its limits which is concerned with the reach of market freedom on the one hand and state or Community regulation on the other. It is the alternative of private initiative versus state policy. With the Sales Directive of 1999 and its art. 7 which seems to impose all parts of the new sales law on the parties in a mandatory way, the question has entered day to day business practice. This inquiry surrounds the issue how much variety in the design of products and conditions is left to the parties or how much protection is needed. Indeed, it is the question which determines the "style" of European Contract Law.

The question therefore demanded consistent treatment, i.e. in a monograph, now, after almost two decades of contract law harmonisation, that a highly integrated internal market is a reality and at a moment when discussion on a European Code is taken up in more and more circles and by all legislative bodies in the European Union. A thorough and substantive investigation of the manifold aspects of this core question has not yet been presented.

The complexity of the question made it advisable to have the different aspects treated and discussed by specialists in different areas: by legal scholars and economists, by EC law and by contract law specialists, by scholars from different jurisdictions with different regulatory approaches and backgrounds. Many of these specialists are authors of the leading or one of the leading text book(s) or monograph(s) in the area they discuss: in law and economics or market failure theory, in institutional economics or in EC and national consumer law, on company and capital market law disclosure, unfair contract terms. They have in part even created the concept or institution they discuss many years ago, such as for instance the idea that the fundamental freedoms extend party

autonomy across borders or the concept of a capital market law (at least in Germany).

The book was made possible as a true text book on party autonomy and information in the internal market, as a consistent and detailed treatise on the major problems and concepts, only because all authors agreed to stick very carefully to the overall design of ideas proposed by the editors. The four parts deal with (1) the economic and constitutional foundations of the question, with (2) the framework to be found in EC Treaty law, i.e. primary EC law, with (3) the fundamental and more general aspects relating to substantive EC contract law legislation, i.e. EC secondary law, and with (4) the most important examples, i.e. the most important individual legal measures. The book covers both general contract law (with consumer contracts) and labour contract law.

The volume is based on a thorough discussion between the authors and the editors. The papers have been discussed at an authors' meeting in London May 2000 hosted by Mads Andenas and the Centre of European Law, King's College, and co-sponsored by the Institut für Wirtschaftsrecht of Martin Luther Universität, Halle-Wittenberg. Mads Andenas had to withdraw because of his duties on taking over the British Institute of International and Comparative Law. The book would not have been possible without the careful supervision of the editing process by Dr. Karl Riesenhuber who was able to make use of his frequent trips between the continent and England where he teaches and works on his Habilitation thesis on system building in European Contract Law. The editors also invited him to take over one of the core examples (chapter 18). The publication of this book was made possible by generous grants of Stiftung Rechtsstaat Sachsen-Anhalt e.V. and Norddeutsche Landesbank Girozentrale – Mitteldeutsche Landesbank. We wish to express our gratitude to all these persons and institutions.

System building in European Contract Law seemed the order of the day to all the authors of this book when they met in London. The mix of different approaches, interdisciplinary and perhaps also interprofessional, seemed so helpful and so much needed in the evolution of European Contract Law that this book and the London meeting brought about the idea of a permanent forum for the exchange of ideas (see, for instance, Micklitz, p. 204). This forum is now a reality in the shape of the Society of European Contract Law – SECOLA (www.secola.org). SECOLA invites all interested scholars and professionals in the area to continue discussion of topics such as the one treated here, of new EC legal measures and initiatives and of the creation of a satisfactory contract law for Europe. The authors are further confirmed in their belief that the time is right for this book and for the establishment of SECOLA, and strengthened in their hope that the book and the Society will

make constructive contributions to the intellectual debate, by the publication in July 2001 of the Commission's Green Paper on European Contract Law (COM(01) 398). Truly these are interesting times for private lawyers.

Halle-Wittenberg, Marburg and Oxford, August 2001

Stefan Grundmann
Wolfgang Kerber
Stephen Weatherill

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