

C. Verdure (ed.), *Environmental Law and Consumer Protection* (Brussels: Larcier 2011), ISBN 978-2-8044-4803-5, 238 p.

1 Introduction

The Lisbon Treaty has intensified the attention paid to the integration of different EU policies.¹ This influences the activities of national administrative authorities.² ‘Environmental Law and Consumer Protection’, edited by *Christophe Verdure*, addresses the integration of environmental protection and consumer protection at Union level. Almost two decades after Krämer’s remark³ that there was almost a complete lack of interrelation between consumer and environmental policies and law and a decade after Tonner’s plea⁴ for an integration of these two policies, this book analyses whether improvements have taken place. The book consists of several contributions with regard to (1) the relationship between consumers and the environment, (2) the protection of consumers through environmental regulation and (3) environmental liability regimes. In this review, we will discuss some issues related to the overarching themes of the book, *i.e.* human health protection and consumer health protection and the need for access to information (paragraph 2) as well as the role of the consumer as a polluter (paragraph 3) and conclude with some critical remarks and suggestions for further research (paragraph 4).

2 Human Health and Consumer Health

Human health is protected by the Treaty provisions on environmental protection (Article 191 TFEU) and it is also encompassed in the Treaty provisions concerning consumer health (Article 169 TFEU). The contributions of *De Sadeleer*,⁵ *Faure*⁶ and *Gonsaëles*⁷ show that environmental law and consumer law do not interfere with one another, except when one might argue that consumers are part of the general public concerned, hence when consumer health is translated into human health. *Van Rijswijk*, who investigated the manner in which consumers are protected under the EU water legislation confirmed this in her research. After all, only one of the Directives related to the so-called ‘right

¹ J.H. Jans, ‘Stop the Integration Principle’, *Fordham International Law Journal* 2010, Vol. 33, num. 5, p. 1533-1547.

² See, for example, Article 11 TFEU stating that the integration of environmental protection into other policies is relevant also during the implementation phase.

³ L. Krämer, ‘On the Interrelation Between Consumer and Environmental Policies in the European Community’, *Journal of Consumer Policy* 1993, p. 465.

⁴ K. Tonner, ‘Consumer Protection and Environmental Protection: Contradictions and Suggested Steps Towards Integration’, *Journal of Consumer Policy* 2000, p. 63.

⁵ De Sadeleer covers the relationship between environmental protection and fundamental rights, p. 25-52.

⁶ Faure focuses on environmental protection and criminal sanction, p. 193-208.

⁷ Gonsaëles analyses environmental protection and criminal sanctions in the context of ship pollution, p. 209-239.

to water' explicitly refers to the concept of the consumer. In the other cases, consumers are regarded as being part of the general public concerned.

Instead, the link between the protection of human health and consumer health is stronger in the field of product standards, such as that of nanotechnologies as analysed by *Van Calster, Bowman* and *D'Silva*. Their contribution discusses the manner in which EU law on cosmetics, food and medical products addresses consumer protection. Their study points out that EU law reacts to the emerging nanotechnologies by inserting explicit references to nanotechnologies (nano-hooks) into Directives. This approach aims to ensure that technologies do not fall through the net of the EU regulatory framework. Although this approach is a step into the right direction, *Van Calster, Bowman* and *D'Silva* highlight a missing labelling obligation. A recent proposal from the European Parliament suggested moving towards such an obligation. However, at the time of the final editing of the book here reviewed, the Council and the European Parliament had failed to reach consensus.⁸ The proposal was therefore refused.

When reading the contributions on the relationship between human health protection and consumer health protection, there can be no other conclusion other than that there is limited interrelation between those two policy areas which comes from their converging goals. Yet, we cannot speak of integration as consumer's interests were diluted into 'general public' interests. This is confirmed by the contributions focusing on access to information, decision making and justice. As can be explicitly recognised in *Van Rijswick's* contribution and more implicitly in *Pozo Vera's*⁹ contribution where environmental and consumer policies are only linked to the extent that consumers are part of the general public concerned.

3 Consumers as Polluters

By consuming, consumers are potential (and quite often real) polluters of the environment. *Tonner* describes this relationship and advocates a more sustainable form of consumption. *De Cendra de Larragán* recognises the same relationship, but he looks at it from a climate change perspective. These two contributions therefore offer two different perspectives on the same problem.

Tonner underlines how consumer policy ignores environmental protection and sustainable development/consumption. In order to promote a change in lifestyle amongst consumers, *Tonner* proposes a legal framework based on a hierarchical relationship between environmental protection and consumer protection. Environmental protection should be regarded as a general interest protecting present and future generations and thus as a higher ranked interest

⁸ See information on European Parliament, the Legislative Observatory at: www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2008/0002.

⁹ *Pozo Vera* describes the Aarhus Convention, p. 53-83.

than the interest of consumer protection, which aims to create a fair balance between present consumers and businesses and is not interested in future generations.

De Cendra de Larragán does not advocate such a hierarchy. He underlines the weakness of the current regulatory scheme as far as it concerns the regulation of consumption. He supports measures changing the lifestyle of consumers by introducing individual emission rights for greenhouse gases. These personal (tradable) emission rights should increase the awareness of consumers and encourage them to adopt a lifestyle change.

The aforementioned shows that EU environmental law fails to address consumers as polluters. The focus of the EU legislator lies with production and not with the consumer. Here, a lack of both interrelation and integration between environmental policy and consumer policy becomes apparent. This could partially be explained by the fact that environmental law usually focuses on top-down measures taken by public-law authorities, while consumer law usually focuses on a bottom-up measures taken by consumers against producers/sellers.

4 Conclusions

The authors of this book have explored the frontiers of knowledge. Though the relationship between environmental law and consumer law is not always made explicit, the book gives some interesting insights to the relevance of environmental law for consumers. In this respect it is a pity that the editor of the book decided to focus more on the consequences of environmental law on consumers rather than the other way around: the relevance of consumer policy for environmental law. With the exception of *Tonner's* contribution, little attention is paid to EU consumer policy as means of enforcing EU environmental law and/or policies. This could have been the unique selling point of this book, as there have not been many contributions focusing on the enforcement of environmental policies within consumer law.

The previous paragraph implies ample space for future research. Without pretending to be exhaustive, we would like to indicate some possible research topics. *Tonner* indicates the first when he advocates an environment-friendly interpretation of certain consumer directives. Should a court, when confronted with consumer-protective provisions aiming at protecting consumers, interpret them in such a way that not only are consumers protected but the environment as well? And what if protecting both the consumer and the environment is not a real option? Should there be a hierarchy between both interests, placing environmental law higher up the ladder? Would it not be better to introduce instruments designed to protect the environment via private law into the consumer *acquis*? We would like to stress that this can never be a 'one-way approach'. Such an approach should be accompanied by a redefinition of environmental measures taking consumer concerns into account. This is also advocated by

*Cassotta*¹⁰ when she concludes that the Environmental Liability Directive should be based on a dual legal basis (Article 192 TFEU and Article 114 TFEU) and take due account of consumer's interests. This will strengthen the position of consumers in their relationship with producers/polluters.

One way or another, this approach would lead to the attribution of responsibilities to consumers. This inevitably raises questions concerning the enforceability of such a responsibility. How should we ensure the compliance of consumers with their responsibilities? From a private law perspective, it would be much easier to regard environmental policies as matters of public policy. For contracts this would mean that parties cannot freely ignore environmental matters. At the same time, studies should be undertaken with regard to the empowerment of consumers in their role as private enforcers of environmental law, more or less similar to the developments in EU competition law. This could lead to a different form of enforcement of environmental values, even though it cannot be expected to be a panacea. For example, the private enforcement of competition law has not yet proved to be as effective as had been hoped. The reason for this could be that consumers do not notice infringements upon their rights under competition law, something that could also plague environmental law. However, the ineffectiveness of the private enforcement of competition law could also be explained from the perspective of civil procedural law. After all, enforcing rights in a civil procedure often proves to be difficult due to provisions related to (the burden of) proof. From that perspective, attention should be given to the precautionary principle. *Van Calster, Bowman* and *D'Silva* underline the relevance of such a principle. However, they regard it as a decision-making tool to authorise the use of nanotechnologies, while we would like to advocate a more in-depth study with regard to the manner in which the precautionary principle could be applied in the field of tort law, namely as an instrument to lower procedural requirements placed upon consumers.

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¹⁰ Cassotta focuses on the relationship between the Environmental Liability Directive and consumer protection, p. 177-192.

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