ABSTRACT. The paper distinguishes different approaches to consumer protection theory, namely pre-interventionist, interventionist, and post-interventionist. Developed market economies are undergoing a mixed rationality of consumer protection based upon a certain level of "acquis consommateur," especially with respect to information type remedies in consumer transactions. On the other hand, self-regulation as well as regulations based on a need concept have failed to be successful alternatives. Finally, the author discusses the consequences of an emerging body of autonomous consumer law for commercial transactions, representation of collective consumer interests, and environmental protection.

The topic to be covered in this paper is extremely broad; one should not expect a complete evaluation of different trends in the consumer impetus. It is almost impossible to cover the ever growing mound of literature on consumer protection problems in different countries. It is quite impossible to survey developments in legislation and case law, be it only for one country. Consumer protection aspects have now been introduced in so many areas of law that it is hard to find out where specific consumer concerns begin and where traditional standards are merely extended. Consumer protection issues have become more and more internationalised, especially within the EC and, lately, the OECD and the United Nations.

This paper has less ambitious goals:

1. To distinguish diverse approaches, which will be called pre-interventionist (the paradigm in developed market economies in the fifties and sixties), interventionist (seventies), and post-interventionist (eighties) consumer protection philosophy, as a means of finding both the "acquis consommateur" and new objects of theoretical research as well as practical solutions;

2. To draw parallels to developments in commercial law in order to allow for a closer discussion of interrelated trends.

Before developing points for reflection, there are several caveats. In distinguishing different paradigms of consumer protection philosophy, one should be well aware of the danger of over-simplifica-
tion. These paradigms are used to re-direct thinking, not necessarily to describe reality.

This paper is not intended to meet the criteria of comparative legal research. It will use laws and cases only to illustrate a point. It will concentrate on developments in the EC and the Member States, most notably in German law, without denying the importance of developments in other developed countries. Problems of consumer safety and health legislation must be left out because they should be discussed in relation to product liability. Instead, this paper will focus on economic aspects of consumer protection.

Finally, it should be mentioned that the remarks apply only to a limited extent to developing countries where the basic needs of consumers are not yet met. Access to consumption, not consumer protection is the central problem there. This applies to some extent also to former socialist countries which are in a stage of transition to market economies where no verifiable results as to consumer protection can be reported yet even though some of them, like the former Soviet Union, have now adopted consumer legislation. 1

PRE-INTERVENTIONIST CONSUMER PROTECTION PHILOSOPHY

Pre-interventionist consumer protection theory, and hence consumer protection law, developed from commercial and competition law (cf. Goldring, 1990). It critically analysed some basic presuppositions of civil law, like freedom of contract, caveat emptor, fault liability, etc.

It proposed “mild” solutions without imposing content-related standards into contractual relations, which of course had to be fitted into the diverse legal traditions. Two main trends and one “counter-movement” can be noted.

Information

Information was seen as the prime instrument for improving consumer autonomy, and hence the position of the consumer in legal, mostly contractual relations. Freedom of contract had to be reinstalled in favour of the consumer, thereby allowing an optimal allocation of resources whilst adhering to the basic principles of contract law. The classical remedies against deception, misrepresentation, etc., had to be reinforced and made more effective. Consumer