To appear in *European Law Review*, 2019, Vol. 44, No. 3

Book review: Irina Domurath, "Consumer Vulnerability and Welfare in Mortgage Contracts" (Hart Publishing, 2017)

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If, as sociologist Maurizio Lazzarato has highlighted, debt has become the fundamental social relation in modern societies, the law must properly acknowledge this and regulate the social function that debt currently fulfils. This becomes particularly evident when considering mortgage debt and the wave of foreclosures that followed the 2008 financial crisis, and the poor protection that existing legal norms were able to provide for millions of families being evicted across Europe.

Irina Domurath's book "Consumer Vulnerability and Welfare in Mortgage Contracts" (Hart Publishing, 2017) addresses this mismatch, arguing that it is imperative that contract law, in particular EU mortgage contract law, takes into account the vulnerable position many consumers find themselves in and foresees appropriate tools to address their vulnerability in an integral manner.

This book, which presents the reader with a revised version of Domurath's doctoral dissertation, offers a valuable review of the existing shortcomings of EU mortgage contract law to deal with the situation of precariousness and vulnerability many mortgage borrowers experience in practice. Grounded in private contract law, Domurath defends however that contract law ought to incorporate welfarist and social justice objectives. To develop her arguments, she relies on a large body of scholarship ranging from political philosophers to private contract law scholars, including sociologists and behavioural economists.

The book begins by making explicit the scenario of the "credit–welfare trade-off," as the author calls it. This refers to a political economy characterised by the rollback of the welfare state and oriented towards the social inclusion of citizens through their market access and their access to credit. This political economy creates, in turn, a "risk society," where individuals are supposed to provide for their own welfare by becoming indebted. This state of things, Domurath explains, has not been coupled with a sufficient acknowledgement of the social function that debt—particularly mortgage debt—plays in our societies, since strong mechanisms protecting vulnerable consumers from this new paradigm are still lacking.

A way forward, the author argues, would be to properly conceptualise consumer vulnerability and to adapt mortgage contract law to take account of vulnerable consumers, adopting mechanisms to effectively protect them against welfare losses—which, in the ambit of mortgage debt, are epitomised by mortgage defaults. In particular, Domurath underlines the preventative role that mortgage contract law should play in a field dominated by standardised agreements, imbalances in negotiating power, and strong asymmetries as regards the parties' financial knowledge.

The concept of vulnerability, central in this book, is defined by combining the idea of exposure to certain risks with the ability to protect oneself from those risks and to cope with their negative consequences. From this overarching definition, Domurath sets out a three-pronged definition of vulnerability that may be of special interest to the reader, particularly given the popularity that the notion of vulnerability has gained in many legal fields in the last decades (see, for example Martha A. Fineman's theorisation of vulnerability from the standpoint of feminist and critical legal theory).

The three dimensions of vulnerability Domurath presents are: relational vulnerability, which relates to internal risk factors such as the asymmetry of information between borrower and lender; event vulnerability, which refers to external risk factors, such as financial crises or the economic uncertainty many precarious workers live in; and lack of resilience, which points to the difficulty for consumers to respond to negative impacts in their financial situation.

This conceptualisation of vulnerability is then mobilised to critically assess the current EU mortgage contract law framework. Here, the author evaluates a set of EU instruments: amongst others, the Mortgage Credit Directive (Directive 2014/17/EU), the Unfair Contract Terms Directive (Directive 93/13/EEC), the Unfair Commercial Practices Directive (Directive 2005/29/EC), and the Consumer Credit Directive (Directive 2008/48/EC). The conclusion Domurath arrives at is that the three-dimensional concept of vulnerability is only partly reflected in current EU legislative instruments in the field of mortgage contracts. It is so as regards relational vulnerability, with strong obligations for lenders to provide certain information to consumers and through the judicial control of unfair terms. It is also so with regard to certain consumers' lack of resilience, although the author gauges that the protection in this area remains insufficient.

Importantly, event vulnerability is not currently incorporated in EU mortgage contract law. While the emphasis in current regulation lies on information obligations, consumer education, and the fairness control of standard terms, as well as "weak" creditworthiness assessments, Domurath questions this proceduralised approach. In contrast to these mechanisms, she advances several proposals that would lead EU mortgage contract law to better take into account event vulnerability. She considers, for instance, financial or debt counselling, the development of a universal financial services framework, and the renegotiation of debt.

More specifically, she defends a strengthened creditworthiness assessment where the possibility of unemployment for precarious workers is factored in, along with the potential liability for lenders if they grant credit despite a negative assessment; a clearer articulation of the "change in circumstances" doctrine in private contract law, which would allow the parties to revisit and renegotiate the repayment of the outstanding debt; and the material review of the adequacy of prices by judges. The innovative character of many of these proposals, coupled with a thorough analysis of how they could be implemented within the existing legal framework, will surely be appreciated by the readers.

Overall, Domurath makes a strong argument that the legal protection for mortgagors at the enforcement stage must go beyond procedural safeguards and should be accompanied by a material dimension that fully addresses their vulnerability. The strongest point of this book is its claim that, by means of a properly conceptualised idea of vulnerability, EU mortgage contract law can achieve both *ex post* and *ex ante* welfarist and social justice goals, improving the existing legal protection for mortgage borrowers. From this perspective, the book provides an answer to the research questions formulated in its first pages, and the choice of methods and the scholarship and normative sources the author deploys are ample and solid.

By choosing to take this approach, however, the book does not directly challenge the "credit–welfare trade-off" or the "risk society" as such. Although it is clear from the outset that the author is critical of this paradigm, it is not clear whether and to what extent the proposals she puts forward would not, in fact, reinforce and consolidate this state of things, by softening the impact on vulnerable mortgagors while leaving unchallenged the structural arrangements causing their vulnerability in the first place.

To sum up, Irina Domurath's book provides a valuable resource for all those interested in EU mortgage contract law, and especially for those seeking alternatives to revamp the defective protection existing legislative instruments provide for mortgage borrowers. It contains a rich conceptual framework—chiefly through the three-dimensional conceptualisation of vulnerability—, a thorough analysis of the existing normative framework, and it offers several innovative proposals to improve the situation of vulnerable mortgage borrowers/consumers. If some of her proposals had been adopted before the crisis, perhaps the disastrous consequences we have seen in the last years could have been somehow mitigated.