Index

access to services 131, 248
acquis
  see consumer acquis
ACTIONES project 19, 223, 252
actors 2, 22–6, 167, 173, 210–12, 222–5, 237
courts as 165, 211, 215
European and national 9, 122, 165
market 250
private 31, 208, 222
public 208, 214
administrative authorities 9–10, 16, 23–6, 31–2, 223–61
  see also regulatory authorities
Advocates General 23–6, 43
Agencies and agency relationships 9, 19, 21–2, 26, 70, 116, 226, 234, 261
aggressive selling practices 18
alternative dispute resolution (ADR) 18, 61, 116, 205
  see also online dispute resolution
applicable law to contract terms
  see Rome I Regulation
arbitration clauses 105–6, 138, 187
autonomy
  collective 19
  of law 177
  of the Member States 45, 54, 166
  party 155, 213
private 3, 19, 149, 154–6, 178, 213
‘average’ consumer
  see consumer
Belgium 10, 183, 247
blacklisted contract terms 24
Brussels I bis (recast) Regulation
  1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters 54, 181–2, 188–9, 194, 200, 205
Bundesarbeitsgericht 217
Bundesgerichtshof 7, 34
Bundesverfassungsgericht 217
Cassis de Dijon case law 171
Central and Eastern Europe 5, 103, 129–66, 178
chapter summaries 26–32
Charter of Fundamental Rights
  see EU Charter of Fundamental Rights
choice-of-law rules
  see Rome I Regulation
citizenship 177, 209
civil courts
  see courts
civil law 32, 119, 145, 152, 155, 157, 160–63, 260
civil procedure
  cross-border civil procedure 181, 188–9
  national civil procedure 4, 8, 12–15, 106, 110–11, 139, 164–6, 238
  see also procedural autonomy
civil society bodies 11, 25, 171
class actions
  see collective redress
cohesion 14, 28–31, 54, 69–70, 179, 184–5, 192–5
collective redress 4, 9
  and individual redress 9, 25, 237–9, 248, 252, 257
Commission Recommendation on 4, 18
Common Frame of Reference
  see Draft Common Frame of Reference for Contract Law
common law 10, 75, 79, 89–90, 172
Community Charter of the
  Fundamental Social Rights of Workers 44
Judicial cooperation in European private law

competence
of enforcement bodies in consumer protection 10, 226
of the CJEU 38, 51
of the EU legislature 4–5, 22, 167–9, 179
of the national courts 35, 40, 51, 54
of the (US) courts 73
shared with the Member States 13, 58
competition law 25–6, 168, 170, 224, 245–7, 258–9
conferral principle 167
confidence in internal market 191, 207
conflicts
between courts 219
between enforcement bodies 234, 236–45
of interests and policies 212–5
of legal orders 196–8, 208–9, 219–21
of rights 210, 215
of rules 231–2, 234
conform interpretation
see interpretation
constitutional dialogue
see dialogue
constitutional fundamental rights
see fundamental rights
constitutional traditions 44, 61, 63–4, 68, 208
constitutionalization 3, 7, 141–2, 230
consumer
as a natural person 150, 178, 179–89, 198
‘average’ consumer 178–81, 186–8, 198, 199–207
concept of 167–207
‘confident’ or ‘empowered’ consumer 190–92, 198, 199–207
indebtedness 95, 114, 116–18, 128, 161
information
see information provision and consumer empowerment
legal definition of in consumer legislation 199–207
passive 105–6
consumer acquis 4, 29, 122
Green Paper on review of 175, 184, 190, 192–3
interpretation of 93–4, 180, 257
review of 4, 169, 199
consumer associations/organisations 26, 134, 255, 256
consumer contracts 111, 132, 136, 138, 145, 153, 181–2, 193, 246
Consumer Credit Directive 204–5, 234
consumer injunctions
see injunctive relief
consumer law
and policy 131–3, 139, 145, 152, 156, 161–4, 184
balance with free movement 194
and the internal market 5, 18, 26, 167–9, 174, 191–2, 194–5, 198, 226
legislative competence 5, 18, 168, 169
level of protection and 110, 114–15, 118–25, 154, 168–9, 178, 182, 185–6, 191–5, 251
as ‘mandatory law’ 12, 15, 135–6, 139, 141, 145–6, 163
reach of harmonisation
see reach of harmonisation
responsibility for 2, 9–10, 227, 244, 255–7
as social regulation 14, 28–9, 94–7, 115, 127, 161, 165, 174, 177–8, 194, 246, 251
Treaty basis
see also legislative competence
Consumer Protection Cooperation (CPC) Regulation 226, 235
consumer protection networks 202, 225–7, 233–5, 252
contract terms
concerning interest rates 25, 108–9, 112, 113, 117, 119, 146, 159, 239
fairness test relating to 159–60
pre–formulated contract terms 28
Index

price reduction in relation to 106
providing for acceleration 113
review/assessment of contract terms
23, 112, 135–6, 140–41, 143, 159–62, 164, 239, 244, 254
standard form/standard term 10, 24, 188
see also blacklisted terms
Court of Justice of the European Union (CJEU) 1
effect of judgements of the 16–19, 34
impact on supreme court 62–3
nature of judgments of the 16–17, 34, 35–47
number of preliminary references to the 6–8
spillovers from the 9, 12–13, 15, 18, 22, 32, 250, 251
courts
civil 8, 23, 116, 244, 253, 255
national/domestic
see national courts
relying 9, 16, 17, 19, 34–5, 41, 122, 125, 130, 138–40, 150–51, 165, 196, 228, 234, 242, 244, 259
regulatory role of 10, 211
relative role of parties and 15, 161–2, 193, 225
criminal actions 10, 57–8, 60, 71, 78, 90
relationship between private law, public law and 58, 60, 71, 223, 253, 255–8, 261
cross-border
e-commerce 226, 233
impact of dialogue 19–20, 27
infringements 227, 253
trade 103
see also cross-border civil procedure
data protection 21, 62, 132
dialogue
as a tool of addressing social problems 14–15, 127–8
as a tool of empowerment 12–14
as a tool of monitoring and enforcement 14
constitutional 16, 51–69
horizontal 7, 18, 32, 232–3, 260
institutional 1–2, 9, 11, 15, 19, 21–2, 26–7, 31, 223–4, 229, 245–59
objectives of 12–16, 171
vertical 7, 18, 20, 172, 233, 244
see also judicial dialogue
direct effect 19, 217
horizontal 30, 94, 215–19
of the four freedoms 19
directives
ADR for Consumer Disputes
Directive 2013/11/EU 18, 205
as choice of Union law 3, 9
Consumer Credit Agreement
Directive 2008/48/EC 204, 234, 251
Consumer Credit Agreement
Relating to Residential Immovable Property (Mortgage Credit) 2014/17/EC 205, 233–4
Consumer Injunctions Directive 2009/22/EC 18, 204, 235
Consumer Rights Directive 2011/83/EC 176
critique of 180
definition of consumer 180–81, 204
limitations of 184
proposal for a 180
Consumer Sales and Guarantees Directive 1999/44/EC 106–7, 200
targeted maximum harmonisation under 180
Distance Selling Directive 2007/7/EU 200
Package Travel Directive 90/314/EEC 4, 180, 199
Package Travel Directive 2015/2302/EU 4, 179–80, 206
Timeshare Protection Directive 2008/122/EC 204
transposition of 3, 13, 15, 29, 94, 105, 130, 137–9, 152–4, 159, 162–4, 180, 185, 251, 260


Universal Service Directive 2002/22/EC 201

dispute resolution
see alternative dispute resolution and courts
diversity
 cultural 13
 jurisdiction 74–6
 of legal traditions 26, 29, 61, 64, 173–5
 of levels of protection 53, 5
see also legal traditions and culture
Draft Common Frame of Reference for Contract Law (DCFR) 182
economic crisis 14, 94–5, 100, 114, 129, 131, 145, 178, 194, 239
social dimensions of 94, 115, 127–8, 131, 161
economic interests 168, 212, 221, 226
interdependence of 13
e-commerce 4, 226–7, 233
see also online dispute resolution
effect of EU law
see direct effect and indirect effect
effet utile 37, 45, 195
‘empowered’ consumer
see consumer
energy 26, 226, 247, 248
enforcement
actors engaged in 10, 22–6
dialogue as a mechanism of 14–15
effectiveness of 8, 152, 158, 163, 166
judgment recognition and 71, 77–9, 105, 129
proceedings 109–21, 126, 186
transformation of 1–2, 9, 31–2, 223–61

see also criminal actions; individual enforcement; regulatory authorities
Enlargement of the EU 9
establishment of jurisdiction 105, 181–2, 188–9
Art.138 and consumer protection 168
European civil code 193
European Convention on Human Rights 11, 21, 53, 59–60, 68, 144
European Court of Human Rights (ECtHR) 1, 53, 59–60, 53, 172, 224, 228, 237
European Court of Justice see Court of Justice of the European Union
European integration 3, 9, 13, 40, 103, 167, 175, 179, 197, 210
economic integration 3, 13, 40, 52
neofunctionalist theories of 13–14
social and political 13
supranationalist theories of 13–14
Europeanisation 19, 173–5, 196
of identity 174
European private law (EPL)
as multi-level system 2–3, 7, 13, 16, 196–7, 210, 229
legislation
see directives
the enforcement of 7–8, 22, 26
the making of 3–11
regulatory character of 3–4, 184, 191
European Social Charter 44
ex officio control of consumer law 1–2, 12, 14, 31
beyond Directive 93/13 12, 31, 106–7, 190, 244, 251
concept of 107, 171, 187, 245, 254–5
in enforcement proceedings 105–6
obligation to exercise 137, 148, 151, 158, 187
of unfair contract terms 1–2, 12, 14, 31, 104
power to exercise 105, 107, 108, 243
public policy basis of 148, 151, 154, 156, 163
experimentalist governance 11, 26, 233

Factortame case law 32–50
financial markets 4, 234, 247, 258
financial services 185, 235, 247, 258
four freedoms 18–19, 34–6, 208–21
balance with fundamental/human rights
see fundamental/human rights
negative integration via the 18–20, 168
France
Commission des clauses abusives 10, 25, 247
Cour de Cassation 7, 190
balance with fundamental freedoms 20, 66–7
Charter of 22–6, 44
horizontal application of 8, 216
private law and 7–9
protection in the US 69–92
social rights 29, 34, 44
Treaty basis 42–4
see also EU Charter of Fundamental Rights; European Convention on Human Rights
game theory 28, 93–128
general contract law 15, 20, 134–5, 148, 154–62, 251
general principles of EU law 8, 14, 20, 37, 42, 44, 51–2, 67, 146, 159, 208, 229, 259–60
Germany 52, 103, 144, 183, 216–19, 230

harmonization
absence of 4, 18
by directives
see directives
policy of 9, 152, 154, 157, 168, 179
reach of
minimum harmonization 9, 170, 175–6, 180, 185
maximum harmonization 9, 170, 175–6, 180, 185, 196
targeted maximum harmonization 9, 170, 175–6, 192, 195
horizontal direct effect
see direct effect
human/fundamental rights
see fundamental/human rights
Hungary 27–9, 52, 129–66
social and economic crisis 161, 165
indirect effect 216–18, 235, 238
individual enforcement 5, 25, 141–2, 238, 253, 255–6
see also alternative dispute resolution; online dispute resolution
information obligations 10, 246, 248, 258
‘informed’ consumer
see consumer
injunctive relief 4, 10, 14, 18, 25, 236, 238, 248, 250, 253, 255, 256, 258
effect of injunctions erga omnes 14, 25
injunctions in the US 73–5, 87, 90–91
institutional cooperation 27, 149, 229, 259
intellectual property 4
interim legal protection
and authorities competent for consumer enforcement 254–5
and state liability 36
internal market
barriers to 179
confidence in 26, 167, 191, 194, 198
promotion of 168–9, 174
Treaty basis 5, 18, 168
uniformity of rules and standards
and 168–9, 192
interpretation
conform interpretation 17–19, 232–3, 237
role of the CJEU and 43, 170, 175–6, 192–4
investment protection 4, 26, 210
Italy 190, 214, 216, 219, 224, 230, 253
judges
of the CJEU 15
relationship between national and European 51, 63, 228
role of the national 2, 10, 12, 15–17, 67, 94, 104–6, 112–13, 137, 141, 148, 155, 238, 244, 256
judicial dialogue
instruments of 11–16
objectives of 11–16
see also dialogue
judicial governance 7, 30–31, 129, 135, 141, 209–12, 215, 221–2
as societal policy-making 211–12
see also courts
Laval case law 34, 36–7, 41, 44, 47–8
law and economics 25, 102–3, 186, 252
see also game theory
legal culture and tradition 13, 29, 146, 156, 162, 173
legislative competence
see competence
Lisbon Treaty 7–8, 59, 65, 67, 168, 175
Maastricht Treaty 168, 210
mandatory law
see consumer law
market integration
see economic integration
mixed contracts and transactions 182–3, 189
mortgages
credit and loans 205, 239–40, 249–51
crisis surrounding 25, 94–101, 107–12, 122, 125, 126–8, 150, 186
multilevel governance 210
mutual trust 4, 12
national courts
as agents 7, 13, 210, 229
as regulators 18, 245–50
lower and first instance 17, 34, 48, 85–7, 97, 114, 130, 139–50, 160–61
see also courts
national legislatures 2, 9, 14, 31, 58, 104, 106–8, 185, 227–8, 237–8, 250–51, 255–6
national private law
instrumentalisation of 170, 194, 211, 215
interdependence of EU and 9, 130, 146, 149, 156
transformation of 3, 137, 148, 153, 157, 163, 166
see also transposition of EU law
negative integration 168, 169
non-discrimination 8, 17, 35, 38, 50, 80, 86, 177, 213–17, 247
non-individually negotiated contract term
see contract terms
notaries 112
online dispute resolution (ODR) 58, 205
Regulation 524/2013 on Online Dispute Resolution for Consumer Disputes
see also alternative dispute resolution
party autonomy
see autonomy
pre-formulated contract terms
see contract terms
preliminary reference procedure 3, 5, 7, 9, 11–12, 16, 20, 27–9, 35, 38–9, 103, 170–76, 192, 208, 238
increase in use of the 6, 98–100, 102–3
reluctance to use the 5, 102–3, 149, 238
strategic use of the 126, 139–40, 192, 197
principle of effective protection 8, 22, 45, 143, 171, 223, 231
principle of equivalent protection 8, 22, 45–6, 143, 171, 223, 231, 244
principle of sincere cooperation 223, 234
principles of EU law
see general principles of EU law
private actors
see consumer organisations; civil
society bodies; individual enforcement
private international law
  see Brussels I bis Regulation; conflicts of laws; Rome I Regulation
private law
  see European private law; national private law
procedural autonomy 1, 4, 18, 35, 45, 96, 122, 142–3, 229, 260
proceduralization 156, 165–6
product liability 4, 83, 182, 199
product safety 226
proportionality
  of action taken 36–7
    EU principle of 43–4, 53, 60–61, 159
    167, 195, 202, 256–60
    US principle 69, 70, 79
public authorities 116, 208, 213, 216, 254
  see also administrative authorities; regulatory authorities
public policy
  in the European Member States 107, 144, 148, 151, 163, 244, 253, 255
  in the United States 78–9, 82
RAPEX 226
reach of harmonisation 16, 176, 184, 192, 199–207
  shift from minimum to maximum to targeted maximum
  harmonisation 170, 175–6
regulated markets 246
regulatory authorities
  advisory functions of 10
  networks of 228, 232
  plurality of 21, 226
  relationship with courts, legislatures and ADR entities 19, 245–50
  relationship with national courts and the CJEU 9–11, 16, 21, 228, 233
  see also administrative authorities; public authorities
remedies
  administrative 236, 247–8, 255–6
  coordination of 254, 256, 259, 261
dissuasiveness of 2
effectiveness of 2, 221, 223–4, 237
EU intervention in the realm of 4, 252, 254
for delayed flights 219–21
judicial development of 24, 93, 142, 238, 260
proportionality of 2, 24, 223, 236, 258
relationship with rights 4, 7, 8, 105, 223
review ex officio
control of consumer law
right to a defence 9, 111
right to a fair trial 8, 54, 62, 224
right to an effective remedy 8, 224, 260
right to be heard 8, 23–4
right to effective judicial protection 8, 22, 224, 229, 235, 244, 251, 255, 257, 259–61
right to take collective action 34–41
Romania 27–9, 129–6
social and economic crisis 161, 165
Rome I Regulation 593/2008 on the Law Applicable to Contractual Relations 181–2
Rome II Regulation 864/2007 on the Law Applicable to Non-Contractual Relations 194
sectoral consumer protection directives 169, 179–80
Spain 93–128
  economic and mortgage crisis 94–9, 101–2
  fundamental rights protection 17
  legislative change 110–12, 114–16, 240–43
  preliminary references to the CJEU 5, 28, 94, 98–104, 129, 230, 240
  role of the judge 12, 15, 94, 240, 242
  Supreme Court of 25
  transition to democracy 52
  unfairness of the ‘cláusulas suelo’ and retroactive effect 25, 107
spillover effects 9, 12–13, 15, 18, 22, 32, 50, 250–51
standard form contracts
  see contract terms
standards
  constitutional and fundamental rights 29, 54–66
state liability 14, 20, 27, 33–50
  of the courts 34–7, 47, 175, 187
subsidiarity principle 168
Sunday trading case law 37

targeted full harmonisation 6, 169–70, 175–6, 180, 184, 186, 192, 195–6, 204, 207
telecommunications 11, 26, 62, 131–4, 226, 247–8, 258
tetralogues 11, 31, 228, 237–40
time limits 106, 141, 176
trade associations 10
transatlantic trade 21
transparency
  electoral 211
  market 248
transport 26, 226
trialogues 9, 11, 31, 223–61
  institutional 259–61
unfair terms in consumer contacts
  see contract terms

United Kingdom
  control of consumer and competition law 10
  relationship with the US 78
  Supreme Court (UKSC) 5, 7
United States (US) 69–82
  relationship between state and federal courts 31, 69–82
  Supreme Court of the 20, 31, 69–82
values of the EU
  Treaty basis 30, 67–8, 173–4
vertical dialogue
  see dialogue
vertical direct effect
  see direct effect
Viking case law 34, 36, 44
‘vulnerable’ consumer
  see consumer
‘weaker’ consumer
  see consumer
weaker party 151, 152, 154, 156–7, 159, 163, 182, 186–8, 200, 204–5, 251