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, 222–61
   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
cohärenz 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
comparative law 17, 19, 21, 27, 31,
42–4, 71, 89–90, 103, 129, 183,
193, 219, 222, 230, 232, 239
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
c 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
<table>
<thead>
<tr>
<th>Index</th>
<th>265</th>
</tr>
</thead>
<tbody>
<tr>
<td>price reduction in relation to 106</td>
<td></td>
</tr>
<tr>
<td>providing for acceleration 113</td>
<td></td>
</tr>
<tr>
<td>review/assessment of contract terms</td>
<td></td>
</tr>
<tr>
<td>23, 112, 135–6, 140–41, 143, 159–62, 164, 239, 244, 254</td>
<td></td>
</tr>
<tr>
<td>standard form/standard term 10, 24, 188</td>
<td></td>
</tr>
<tr>
<td>see also blacklisted terms</td>
<td></td>
</tr>
<tr>
<td>Court of Justice of the European Union (CJEU) 1</td>
<td></td>
</tr>
<tr>
<td>effect of judgements of the 16–19, 34</td>
<td></td>
</tr>
<tr>
<td>impact on supreme court 62–3</td>
<td></td>
</tr>
<tr>
<td>nature of judgments of the 16–17, 34, 35–47</td>
<td></td>
</tr>
<tr>
<td>number of preliminary references to the 6–8</td>
<td></td>
</tr>
<tr>
<td>spillovers from the 9, 12–13, 15, 18, 22, 32, 250, 251</td>
<td></td>
</tr>
<tr>
<td>courts</td>
<td></td>
</tr>
<tr>
<td>civil 8, 23, 116, 244, 253, 255</td>
<td></td>
</tr>
<tr>
<td>national/domestic</td>
<td></td>
</tr>
<tr>
<td>see national courts</td>
<td></td>
</tr>
<tr>
<td>referring 9, 16, 17, 19, 34–5, 41, 122, 125, 130, 138–40, 150–51, 165, 196, 228, 234, 242, 244, 259</td>
<td></td>
</tr>
<tr>
<td>regulatory role of 10, 211</td>
<td></td>
</tr>
<tr>
<td>relative role of parties and 15, 161–2, 193, 225</td>
<td></td>
</tr>
<tr>
<td>criminal actions 10, 57–8, 60, 71, 78, 90</td>
<td></td>
</tr>
<tr>
<td>relationship between private law, public law and 58, 60, 71, 223, 253, 255–8, 261</td>
<td></td>
</tr>
<tr>
<td>cross-border</td>
<td></td>
</tr>
<tr>
<td>e-commerce 226, 233</td>
<td></td>
</tr>
<tr>
<td>impact of dialogue 19–20, 27</td>
<td></td>
</tr>
<tr>
<td>infringements 227, 253</td>
<td></td>
</tr>
<tr>
<td>trade 103</td>
<td></td>
</tr>
<tr>
<td>see also cross-border civil procedure</td>
<td></td>
</tr>
<tr>
<td>data protection 21, 62, 132</td>
<td></td>
</tr>
<tr>
<td>dialogue</td>
<td></td>
</tr>
<tr>
<td>as a tool of addressing social problems 14–15, 127–8</td>
<td></td>
</tr>
<tr>
<td>as a tool of empowerment 12–14</td>
<td></td>
</tr>
<tr>
<td>as a tool of monitoring and enforcement 14</td>
<td></td>
</tr>
<tr>
<td>constitutional 16, 51–69</td>
<td></td>
</tr>
<tr>
<td>horizontal 7, 18, 32, 232–3, 260</td>
<td></td>
</tr>
<tr>
<td>institutional 1–2, 9, 11, 15, 19, 21–2, 26–7, 31, 223–4, 229, 245–59</td>
<td></td>
</tr>
<tr>
<td>objectives of 12–16, 171</td>
<td></td>
</tr>
<tr>
<td>vertical 7, 18, 20, 172, 233, 244</td>
<td></td>
</tr>
<tr>
<td>see also judicial dialogue</td>
<td></td>
</tr>
<tr>
<td>direct effect 19, 217</td>
<td></td>
</tr>
<tr>
<td>horizontal 30, 94, 215–19</td>
<td></td>
</tr>
<tr>
<td>of the four freedoms 19</td>
<td></td>
</tr>
<tr>
<td>directives</td>
<td></td>
</tr>
<tr>
<td>ADR for Consumer Disputes Directive 2013/11/EU 18, 205</td>
<td></td>
</tr>
<tr>
<td>as choice of Union law 3, 9</td>
<td></td>
</tr>
<tr>
<td>Consumer Credit Agreement Directive 2008/48/EC 204, 234, 251</td>
<td></td>
</tr>
<tr>
<td>Consumer Credit Agreement Relating to Residential Immovable Property (Mortgage Credit) 2014/17/EC 205, 233–4</td>
<td></td>
</tr>
<tr>
<td>Consumer Injunctions Directive 2009/22/EC 18, 204, 235</td>
<td></td>
</tr>
<tr>
<td>Consumer Rights Directive 2011/83/EC 176</td>
<td></td>
</tr>
<tr>
<td>critique of 180</td>
<td></td>
</tr>
<tr>
<td>definition of consumer 180–81, 204</td>
<td></td>
</tr>
<tr>
<td>limitations of 184</td>
<td></td>
</tr>
<tr>
<td>proposal for a 180</td>
<td></td>
</tr>
<tr>
<td>Consumer Sales and Guarantees Directive 1999/44/EC 106–7, 200</td>
<td></td>
</tr>
<tr>
<td>targeted maximum harmonisation under 180</td>
<td></td>
</tr>
<tr>
<td>Distance Selling Directive 1997/7/EC 200</td>
<td></td>
</tr>
<tr>
<td>Package Travel Directive 90/314/EC 4, 180, 199</td>
<td></td>
</tr>
<tr>
<td>Package Travel Directive 2015/2302/EU 4, 179–80, 206</td>
<td></td>
</tr>
<tr>
<td>Timeshare Protection Directive 2008/122/EC 204</td>
<td></td>
</tr>
</tbody>
</table>
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

EU Charter of Fundamental Rights

Art.47 8, 22–6, 223, 224, 229, 231, 235, 242, 251, 254, 257, 259–61

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 (ECHR) 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, 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

effective 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
Judicial cooperation in European private law

JUDCOOP project 17, 209
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
Index

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
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
see 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
Judicial cooperation in European private law

<table>
<thead>
<tr>
<th>Standards</th>
<th>United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional and fundamental rights 29, 54–66</td>
<td>control of consumer and competition law 10</td>
</tr>
<tr>
<td>State liability 14, 20, 27, 33–50</td>
<td>relationship with the US 78</td>
</tr>
<tr>
<td>of the courts 34–7, 47, 175, 187</td>
<td>Supreme Court (UKSC) 5, 7</td>
</tr>
<tr>
<td>Subsidiarity principle 168</td>
<td>United States (US) 69–82</td>
</tr>
<tr>
<td>Sunday trading case law 37</td>
<td>relationship between state and federal courts 31, 69–82</td>
</tr>
<tr>
<td>Targeted full harmonisation 6, 169–70, 175–6, 180, 184, 186, 192, 195–6, 204, 207</td>
<td>Supreme Court of the 20, 31, 69–82</td>
</tr>
<tr>
<td>Telecommunications 11, 26, 62, 131–4, 226, 247–8, 258</td>
<td>values of the EU</td>
</tr>
<tr>
<td>Tetralogues 11, 31, 228, 237–40</td>
<td>Treaty basis 30, 67–8, 173–4</td>
</tr>
<tr>
<td>Time limits 106, 141, 176</td>
<td>vertical dialogue</td>
</tr>
<tr>
<td>Trade associations 10</td>
<td>see dialogue</td>
</tr>
<tr>
<td>Transatlantic trade 21</td>
<td>vertical direct effect</td>
</tr>
<tr>
<td>Transparency</td>
<td>see direct effect</td>
</tr>
<tr>
<td>Electoral 211</td>
<td>Viking case law 34, 36, 44</td>
</tr>
<tr>
<td>Market 248</td>
<td>‘Vulnerable’ consumer</td>
</tr>
<tr>
<td>Transport 26, 226</td>
<td>see consumer</td>
</tr>
<tr>
<td>Trialogues 9, 11, 31, 223–61</td>
<td>‘Weaker’ consumer</td>
</tr>
<tr>
<td>Institutional 259–61</td>
<td>see consumer</td>
</tr>
<tr>
<td>Unfair terms in consumer contacts</td>
<td>weaker party 151, 152, 154, 156–7, 159, 163, 182, 186–8, 200, 204–5, 251</td>
</tr>
</tbody>
</table>

see contract terms