

EUROPEAN CONTRACT LAW

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PREFACE

One may rightly say that the private law of the European Union is in a profound identity crisis. After many years of progressive integration, the development towards ever closer harmonisation, which was outlined in the founding treaties and also emphasised later on a political level, has now lost much of its momentum. Only a little more than ten years ago, following an impressive number of sectoral legal instruments, it was still possible, albeit with considerable effort, to adopt the Consumer Rights Directive, the aim of which was cross-cutting, or horizontal, harmonisation. However, this could only be achieved politically by leaving out the area of sales law, which is so central to private law, as well as the tricky field of standard terms. A little after that, the proposal for a Common European Sales Law (CESL), whose optionality seemed to offer a supposedly elegant alternative to the legal-political tightrope walk of fully harmonising legislation, came to a rather inglorious end. The years that followed were marked by a certain struggle to find a proper form in which the failed CESL proposal could be moulded. In the framework of the EU Commission's Digital Agenda, a special regime for contracts for the provision of digital content and services was finally introduced. A second proposal, initially primarily dedicated to the online trade in goods, is now little more than a cautious evolution of the Consumer Sales Directive, even though it does bring a few innovations in terms of content. In the past years, sustainability issues have become increasingly important also for private law. The 2024 Right to Repair Directive bears witness to the difficulties in marrying this policy goal with the traditional postulate of consumer protection. EU private law can therefore still be characterised as the often-cited patchwork quilt – or more optimistically: as a pointillistic painting.

Legal scholarship has accompanied these developments throughout Europe critically, but also constructively. Over the decades, it has been increasingly departing from a purely dogmatic view of national law, opening up to a comparative perspective. A truly European legal academia will prepare the ground for better legislation at the level of the EU. It is one of the aims of this volume to contribute to this endeavour. Initially published in German under the title *Europäisches Vertragsrecht. Institutionelle und methodische Grundlagen, materielles Recht, Kollisionsrecht* (Berlin/Boston: De Gruyter, 2021), the present work strives at being more than a mere translation. Its content has been adapted to a readership more interested in a primarily European perspective, and less keen on learning details about the subtleties of integrating the content of EU directives into the German civil law system and the fine-tuning connected to it.

Moreover, it has been brought up to date, e.g. with a new chapter on the right to the repair of goods. Readers may still note that, throughout the volume, German law and literature are very visible. This is partly due to the fact that German academia is notoriously thorough and exhaustive when it comes to new legislation and case law. At the same time, of course, it reflects the academic environment in which the original version of this book was made.

Preparing a translation – or, more accurately: a second edition in English language – is a painstaking enterprise. My team at the University of Konstanz – Carolin Dedek, Julia Linhart, Olivia Radlmayr, and Eva Winkelmann – have done their best to make the task as easy as possible. A special thanks goes to Dr Adrian Hemler, LL.M. (Cantab), who has not only coordinated the work on the manuscript, but also provided me with an excellent textual basis for the overhaul. At Intersentia, Nicolas Cassart has always been very supportive towards the project, and Sophie Joiris has done a marvellous job at copy-editing the voluminous manuscript. Readers are welcome to share their comments and thoughts on European contract law with me at michael.stuerner@uni-konstanz.de.

Konstanz, May 2025
Michael Stürner

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TABLE OF ABBREVIATIONS

A.C./AC	Law Reports, Appeal Cases (Third Series)
AcP	Archiv für die civilistische Praxis
ACQP	Acquis Principles
ADR	Alternative Dispute Resolution
AG	Aktiengesellschaft; Amtsgericht
AG	Attorney General
AL	Ad Legendum (journal)
All ER	All England Law Reports
Am.J.Comp.L.	American Journal of Comparative Law
AnwBl	Anwaltsblatt (journal)
AöR	Archiv des öffentlichen Rechts (journal)
Art.	Article
B2B	Business-to-Business
B2C	Business-to-Consumer
BAG	Bundesarbeitsgericht (German Federal Labour Court)
BAGE	Official collection of decisions of the German Federal Labour Court
BauR	Zeitschrift für das gesamte öffentliche und zivile Baurecht (journal)
BB	Betriebs-Berater (journal)
BeckOGK	Beck'scher online Großkommentar zum BGB
BeckRS	Beck Rechtssache
BFH	Bundesfinanzhof (German Federal Revenue Court)
BG	Bundesgericht (Swiss Supreme Court)
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BGBL.	Bundesgesetzblatt (Official Journal, Germany)

BGE	Sammlung der Entscheidungen des Schweizerischen Bundesgerichts (Official collection of decisions of the Swiss Supreme Court)
BGH	Bundesgerichtshof (German Federal Court of Justice)
BGHZ	Sammlung der Entscheidungen des Bundesgerichtshofs in Zivilsachen (Official collection of decisions of the German Federal Court of Justice)
BKR	Zeitschrift für Bank- und Kapitalmarktrecht (journal)
BLJ	Bucerius Law Journal
BR-Drucks.	Bundesrats-Drucksache (German Parliamentary Documents)
BT-Drucks.	Bundestags-Drucksache (German Parliamentary Documents)
BVerfG	Bundesverfassungsgericht (German Federal Constitutional Court)
BVerfGE	Sammlung der Entscheidungen des Bundesverfassungsgerichts (Official collection of decisions of the German Federal Constitutional Court)
BVerwG	Bundesverwaltungsgericht (German Federal Administrative Court)
BVerwGE	Sammlung der Entscheidungen des Bundesverwaltungsgerichts (Official collection of decisions of the German Federal Administrative Court)
C. A.	Court of Appeal
c.c.	Codice Civile (Italy)
c.i.c.	culpa in contrahendo
C2C	Consumer-to-Consumer
Cal. L. Rev.	California Law Review
CEFL	Commission on European Family Law
CESL	Common European Sales Law
CFR	Charter of Fundamental Rights
Ch.	Law Reports, Chancery Division
ChD	Chancery Division

CISG	United Nations Convention on Contracts for the International Sale of Goods
civ	civil
CJEU	Court of Justice of the European Union
CJQ	Civil Justice Quarterly
Clev. St. L. Rev.	Cleveland State Law Review
CML Rev.	Common Market Law Review
CMR	Convention relative au contrat de transport international de marchandises par route
COM	Commission documents (European Commission)
CoPECL	Common Principles of European Contract Law
Cornell Int'l L.J.	Cornell International Law Journal
CPR	Civil Procedure Rules (England)
CR	Computer und Recht (journal)
DAO	Decentralised Autonomous Organisation
DAR	Deutsches Autorecht (journal)
DB	Der Betrieb (journal)
DCFR	Draft Common Frame of Reference
DGVZ	Deutsche Gerichtsvollzieher Zeitung (journal)
DNotZ	Deutsche Notarzeitschrift (journal)
DRiZ	Deutsche Richterzeitschrift (journal)
DVB1	Deutsches Verwaltungsblatt (journal)
e.a.	et alii
EBLR	European Business Law Review
ECHR	European Court of Human Rights
ECLI	European Case Law Identifier
EGGBG	Einführungsgesetz zum Bürgerlichen Gesetzbuch (German Introductory Act to the Civil Code)
Einl.	Einleitung (introduction)
EJCCL	European Journal of Commercial Contract Law
ELI	European Law Institute

EnzEuR	Enzyklopädie des Europarechts
EPRS	European Parliamentary Research Service
ERCL	European Review of Contract Law
ERPL	European Review of Private Law
etc.	et cetera
EU	European Union
EuCML	Journal of European Consumer and Market Law (journal)
EuGRZ	Europäische Grundrechte-Zeitschrift (journal)
EULA	End User Licence Agreement
EuR	Zeitschrift für Europarecht (journal)
Europa dir. priv.	Europa e Diritto Privato (journal)
euvr	Zeitschrift für Europäisches Unternehmens- und Verbraucherrecht (journal)
EuZA	Europäische Zeitschrift für Arbeitsrecht (journal)
EuZW	Europäische Zeitschrift für Wirtschaftsrecht (journal)
EWHC	Decisions of the High Court of London
EWS	Europäisches Wirtschafts- und Steuerrecht (journal)
FamRZ	Zeitschrift für das gesamte Familienrecht (journal)
ff.	following
FS	Festschrift
GDP	gross domestic product
GDPR	General Data Protection Regulation
GG	Grundgesetz (German Constitution)
GmbHR	GmbH-Rundschau (journal)
GPR	Zeitschrift für das Privatrecht der Europäischen Union (journal)
GRUR Int	Gewerblicher Rechtsschutz und Urheberrecht Internationaler Teil (journal)
GRUR RR	Gewerblicher Rechtsschutz und Urheberrecht Rechtsprechungs-Report (journal)

GRUR	Gewerblicher Rechtsschutz und Urheberrecht (journal)
GRUR-Prax	Gewerblicher Rechtsschutz und Urheberrecht, Praxis im Immaterialgüter- und Wettbewerbsrecht (journal)
GS	Gedächtnisschrift
GTC	general terms and conditions
H. L./HL	House of Lords
HRR	Höchstrichterliche Rechtsprechung (Zeitschrift)
ICANN	International Corporation for Assigned Names and Numbers
ICLQ	International and Comparative Law Quarterly
IHR	Internationales Handelsrecht (journal)
IMCO	Committee on the Internal Market and Consumer Protection (European Parliament)
Ind. J. Global L. Stud.	Indiana Journal of Global Legal Studies
int.	international
IPRax	Praxis des internationalen Privat- und Verfahrensrechts (journal)
IPRG	Bundesgesetz über das Internationale Privatrecht (Swiss Act on Private International Law)
IPRspr	Die deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatrechts
IWRZ	Zeitschrift für Internationales Wirtschaftsrecht (journal)
JbItalR	Jahrbuch für Italienisches Recht (journal)
JPrivIntL	Journal of Private International Law
JURA (JK)	JURA-Kartei (journal)
JURA	Juristische Ausbildung (journal)
JURI	Committee on Legal Affairs (European Parliament)
JuS	Juristische Schulung (journal)
JZ	Juristenzeitung (journal)
K&R	Kommunikation und Recht (journal)
KG	Kammergericht; Kommanditgesellschaft

KTS	Zeitschrift für Insolvenzrecht (journal)
L.J.	Law Journal
LG	Landgericht (German Regional Court)
LMK	Kommentierte BGH-Rechtsprechung Lindenmaier Möhring (journal)
Ltd.	Limited
MDR	Monatsschrift für deutsches Recht (journal)
MEP	Member of the European Parliament
Mich. L. Rev.	Michigan Law Review
MLR	Modern Law Review
MMR	Multimedia und Recht (journal)
MüKo	Münchener Kommentar zum BGB (commentary on the German civil code)
NIPR	Nederlands internationaal privaatrecht (journal)
NJ	Neue Justiz (journal)
NJOZ	Neue Juristische Online Zeitschrift (journal)
NJW	Neue Juristische Wochenschrift (journal)
NJW-aktuell	Neue Juristische Wochenschrift aktuell (journal)
NJW-RR	Neue Juristische Wochenschrift Rechtsprechungsreport (journal)
NVersZ	Neue Zeitschrift für Versicherung und Recht (journal)
NZA	Neue Zeitschrift für Arbeitsrecht (journal)
NZG	Neue Zeitschrift für Gesellschaftsrecht (journal)
NZM	Neue Zeitschrift für Mietrecht (journal)
NZV	Neue Zeitschrift für Verkehrsrecht (journal)
ODR	Online Dispute Resolution
OGH	Oberster Gerichtshof (Austrian Supreme Court)
Ohio St. J. Disp. Res.	Ohio State Journal on Dispute Resolution
ÖJZ	Österreichische Juristen-Zeitung (journal)
OLG	Oberlandesgericht (Higher Regional Court, Germany)

PECL	Principles of European Contract Law
PICC	Principles of International Commercial Contracts
PIL	Private International Law
PWW	Prütting/Wegen/Weinreich (commentary on the German civil code)
QB	Law Reports Queen's Bench Division
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht (journal)
Rass. dir. civ.	Rassegna di diritto civile (journal)
RdA	Recht der Arbeit (journal)
Rev. crit. DIP	Revue critique de droit international privé (journal)
Rev. trim. dr. civ.	Revue trimestrielle de droit civil (journal)
RGZ	Entscheidungen des Reichsgerichts in Zivilsachen (Official collection of decisions of the German Imperial Court)
Riv. dir. civ.	Rivista di diritto civile (journal)
RIW	Recht der Internationalen Wirtschaft (journal)
RRa	Reiserecht aktuell (journal)
SCE	Societas Cooperativa Europaea
SchiedsVZ	Neue Zeitschrift für Schiedsverfahren (journal)
SE	Societas Europaea
sec.	section
SME	Small and Medium Enterprise
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNCITRAL	United Nations Commission On International Trade Law
UNIDROIT	Institut international pour l'unification du droit privé
Unif. L. Rev.	Uniform Law Review
UNSDG	United Nations Sustainable Development Goals
US	United States
v.	versus
VersR	Versicherungsrecht (journal)

VuR	Verbraucher und Recht (journal)
Wash.U.L.Rev.	Washington University Law Review
WLR	Weekly Law Reports
WM	Wertpapiermitteilungen (journal)
WRP	Wettbewerb in Recht und Praxis (journal)
Yale L.J.	Yale Law Journal
ZEuP	Zeitschrift für Europäisches Privatrecht (journal)
ZEuS	Zeitschrift für europarechtliche Studien (journal)
ZfPW	Zeitschrift für die gesamte Privatrechtswissenschaft (journal)
ZfRV	Zeitschrift für Rechtsvergleichung, internationales Privatrecht und Europarecht (journal)
ZGB	Zivilgesetzbuch (Swiss Civil Code)
ZGR	Zeitschrift für Gesellschaftsrecht (journal)
ZGS	Zeitschrift für das gesamte Schuldrecht (journal)
ZHR	Zeitschrift für das gesamte Handels- und Wirtschaftsrecht (journal)
ZIP	Zeitschrift für Wirtschaftsrecht (journal)
ZJS	Zeitschrift für das juristische Studium (journal)
ZKM	Zeitschrift für Konfliktmanagement (journal)
ZLW	Zeitschrift für Luft- und Weltraumrecht (journal)
ZPO	Zivilprozessordnung (German Code of Civil Procedure)
ZRP	Zeitschrift für Rechtspolitik (journal)
ZSR	Zeitschrift für Schweizerisches Recht (journal)
ZUM	Zeitschrift für Urheber- und Medienrecht (journal)
ZVertriebsR	Zeitschrift für Vertriebsrecht (journal)
ZVglRWiss	Zeitschrift für vergleichende Rechtswissenschaft (journal)
ZZP	Zeitschrift für Zivilprozess (journal)
ZZPInt	Zeitschrift für Zivilprozess International (journal)

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