

Table of Contents

Consortium Members	XI
Chapters and Authors.....	XIII
Foreword	1
Executive Summary	5
Chapter 1. General Structure of Procedural Consumer Protection (Stephanie Law)	9
A. Introduction	9
B. The Implementation of EU Consumer Legislation in the National Legal Systems.....	10
I. Summary of the Status Quo	10
II. Problems Identified in the National Legal Systems.....	11
1. Fragmentation and Complexity in Consumer Law.....	11
2. The Lack of Knowledge on the Part of Stakeholders	18
3. The Perception of the National Judge.....	21
III. Assessment of the Current Situation.....	21
C. The Concept of the Consumer	23
I. Summary of the Status Quo	23
II. Problems Identified in the National Legal Systems.....	27
1. Positive and Negative, Uniform and Non-Uniform Definitions of the Consumer	27
2. The Passive and Active Consumer.....	27
3. Extension of the Consumer Concept to Parties Other than Natural Persons	30
4. The Changing Status of the Consumer	32
III. Assessment of the Current Situation.....	34
D. The Enforcement of Consumer Protection Law.....	38
I. Summary of the Status Quo.....	38
1. Different Architectures of Enforcement	39
a) Initiating the Enforcement of Consumer Law	39
b) The Character of the Body Enforcing Consumer Law	39
(Examples of) National Systems of Enforcement	40
II. Problems Identified in the National Legal Systems	43
1. Absence of Guiding Principles and Best Practices	43
2. The Typical Character of Consumer Dispute Resolution.....	44
3. Different Mechanisms of Enforcement for Different Types of Problems.....	52
4. Measures beyond Enforcement.....	54
III. Assessment of the Current Situation.....	55
E. Proposals and Improvements.....	57
I. Need for Increased Transparency and Knowledge Dissemination	57
II. Clarification of the Consumer Concept	57
III. Need for Increased Cooperation	58
IV. Anticipated Developments: The New Deal for Consumers.....	58
F. Recommendations to the European Commission.....	62
Chapter 2. Access to Justice (Remo Caponi and Janek Tomasz Nowak)	63
A. Introduction to the Chapter	63
B. Costs.....	65
I. Summary of the Status Quo	65
1. The Issue of Costs.....	65
a) Costs in Relation to the Value of the Claim	67
b) Costs in Relation to Means	68
2. Which Costs are Involved?	69
a) Court Costs	69
b) Costs of Legal Representation.....	69
3. Who Pays for the Costs of Judicial Proceedings?.....	70
II. Assessment of the National Legal Systems	71
1. Particular Issues Relating to Costs.....	71
a) Court Costs	71

Table of Contents

b) Costs of Representation by a Lawyer	71
aa) General	71
bb) The Requirement to be Represented by a Lawyer	71
cc) The Necessity to be Represented by a Lawyer	73
c) Costs Risk	74
2. General Assessment Regarding Costs	74
C. Legal Aid	75
I. Introduction to Legal Aid	75
II. Summary of the Status Quo	76
1. Availability of Legal Aid in Consumer Protection Disputes	76
2. Nature of Legal Aid Systems	76
a) Differentiation Based on Who Benefits	77
b) Differentiation Based on the Subject Matter of the Dispute	77
c) Differentiation Based on Having Previously Completed an ADR Procedure Provided for by the State	77
3. Requirements of Legal Aid for Consumer Protection Disputes	78
a) Financial Parameters for Granting Legal Aid	78
b) Assessing whether a Claim or Defence is Meritorious	79
c) Further Legal Aid Requirements or Conditions	80
4. Content of Legal Aid	80
a) Exemption from Payment of Certain Costs	80
b) Legal Advice	81
c) Legal Representation	81
III. Problems Identified in the National Legal Systems	81
1. Limited Availability of Legal Aid in Out-of-court Proceedings (Settlement, Mediation)	81
2. The Means Test for Obtaining Legal Aid May Be Too Strict	81
3. The Assessment of the Merits of a Claim as a Condition for Eligibility	82
4. Additional Requirements for Obtaining Legal Aid	83
5. The Content and Quality of Legal Aid	83
IV. Additional Issues Appearing from the Interviews	84
1. Lack of Knowledge	84
2. The Need to Apply For Legal Aid and Administrative Formalities to Be Completed	84
3. Risk of Overconsumption	84
D. Proposals and Recommendations	85
I. Reducing the Cost of Legal Representation by Developing Cost Avoiding Strategies	85
1. Representation by another Party than a Lawyer	85
a) Representation by a Consumer Protection Association	85
b) Representation by a Regulatory Authority	86
2. Pro se Litigation	86
a) Abolishing Mandatory Representation in Consumer Disputes	86
b) Tackling Complexity in Consumer Disputes	87
aa) General Recommendations to Tackle Complexity	87
bb) Specific Proposals to Tackle Complexity	88
cc) Enlarging the Role of the Judge	89
II. Promoting a Better Knowledge of Legal Aid amongst Consumers	89
1. Information Campaign	89
2. Standard Letter	89
III. Alternative Strategies for Litigation Funding: Third-Party Funding Through Intermediaries via the Internet	90
1. Concept	90
2. Advantages	90
3. Problems	90
4. Regulating TPF via Internet Platforms	92
E. Recommendations to the European Commission	93
Chapter 3. Consumer Actions before National Courts (Burkhard Hess and Piet Taelman)	95
A. The Framework of the National Procedures: Flexible vs. Formalistic Approaches	95
I. The Respective Role of the Parties and Judges in Civil Proceedings	95
1. Party Disposition as an Overarching Principle	95
2. Factual Allegations Made	96
3. The Increasing Role of Case Management	99

Table of Contents

4. Influence of the Court's Investigative and Managerial Powers on the Settlement of the Dispute.....	101
5. Influence of Factual Circumstances, especially Whether Parties are Represented or Not.....	101
6. The Court's Obligation/Power to Apply the Law of its Own Motion.....	102
7. Acceleration of the Proceedings.....	104
8. General Assessment	105
II. Modifications of the National Procedures	106
1. No Specific Courts or Special Court Procedures for Consumer Disputes.....	106
2. Small Claims Proceedings	108
B. <i>Ex officio</i> Application and Control of EU Consumer Law	111
I. The Meaning of <i>ex officio</i> – An Assessment of the Case Law of the ECJ	111
1. The Development of the Case Law.....	113
2. EU Principles Underpinning <i>ex officio</i> : Effectiveness and Equivalence of EU Consumer Protection Law in the National Civil Procedures.....	118
3. Constitutional Underpinnings: The Duty of Effective Judicial Protection	119
II. The Practical Operation of the Concept	122
1. Ordinary Proceedings.....	123
2. Default Proceedings and Payment Orders	125
3. Enforcement of Judgments and of Other Enforceable Titles.....	127
4. Arbitration and ADR	128
C. The Practice in the EU Member States	130
I. Ordinary Proceedings	130
1. <i>Jura novit curia</i> and the <i>ex officio</i> Application of Consumer Law.....	130
2. The Specific Situation Concerning Unfair Contract Terms.....	132
3. The Issue of Facts.....	133
4. <i>Ex officio</i> Application of Consumer Law and Issues of Evidence.....	134
a) The Power of the Court to Take Measures of Inquiry	134
b) Necessity to Establish Consumer Status.....	136
5. Small Claims Procedures.....	137
6. Unrepresented Consumers.....	137
7. Appellate Proceedings	138
II. Default and Payment Order Procedures	139
1. Default Judgments.....	139
2. Payment Order Procedures.....	140
a) Does a Payment Order Proceeding Exist?	140
b) Which Authority Hears the Payment Order Proceedings?.....	141
c) What Information is Available to the Authority Hearing the Claim for a Payment Order?.....	141
d) The Scope of Review at the Application Stage	143
e) Payment Order Proceedings as <i>ex parte</i> Proceedings: When is the Defendant Consumer Informed?.....	144
f) The Transfer to Ordinary Proceedings.....	145
g) Defences against a Payment Order at the Enforcement Stage	146
h) Practical Implications.....	149
III. Enforcement Procedures	149
1. The General Situation	149
2. Protection at the Stage of Enforcement.....	151
IV. Jurisdiction and Arbitration Clauses.....	153
D. Assessment	154
E. Recommendations to the European Commission.....	156
Chapter 4. Actions for Collective Redress (Stefaan Voet).....	157
A. Introduction to the Chapter.....	157
B. Injunctive/Compensatory Relief and Collective Actions	161
I. Summary of the Status Quo	161
1. Terminology	161
2. Collective Actions for Injunctive Relief	162
3. Collective Actions for Compensatory Relief.....	163
II. Problems Identified in the National Legal Systems.....	163
C. Injunctive Relief, Individual Redress and Collective Actions.....	165
I. Staying of an Individual Claim Until Collective Proceedings Have Finished	165

Table of Contents

1. Summary of the Status Quo: Sales Sinués	165
2. Problems Identified in the National Legal Systems	167
a) Online Survey and Interviews.....	167
b) Jurisdictions with a Specific National Procedural Rule Ordering the Stay of Individual Proceedings in Case Parallel Collective Proceedings are Ongoing.....	168
c) Jurisdictions with a General National Procedural Rule Allowing the Court to Stay Proceedings	169
II. Binding or Non-Binding Effect of the Decision in the Collective Proceedings.....	170
1. Summary of the Status Quo: Invitel	170
2. Problems Identified in the National Legal Systems	171
a) Jurisdictions Where the Outcome of Collective Proceedings has an Erga Omnes Res Judicata Effect.....	171
b) Jurisdictions Where the Outcome of Collective Proceedings has no Erga Omnes Res Judicata Effect.....	172
c) Jurisdictions with Representative Collective Actions	173
D. Proposals and Improvements.....	174
I. Staying of an Individual Claim until Collective Proceedings Have Finished.....	174
II. Binding or Non-binding Effect of the Decision in the Collective Proceedings.....	174
E. Recommendations to the European Commission.....	176
Chapter 5. Consumer Alternative Dispute Resolution (Chris Hodges)	177
A. Introduction to the Chapter.....	177
I. Different Meanings of ADR.....	177
II. Differences in Architectures.....	179
III. Variations in Knowledge of Consumer ADR, Tied to its Stage of Development	180
B. Character of Consumer ADR.....	182
I. Mandatory/Non-Mandatory Nature of Consumer ADR	182
1. Summary of the Status Quo	182
2. Problems Identified in the National Legal Systems	182
3. Assessment of the Current Situation	182
C. Procedural Rules on Standing and Representation Requirements before ADR Fora.....	185
I. Summary of the Status Quo.....	185
II. Problems Identified in the National Legal Systems.....	185
III. Assessment of the Current Situation.....	185
D. Application by ADR Bodies of Mandatory EU Consumer Law.....	186
I. Summary of the Status Quo	186
II. Problems Identified in the National Legal Systems.....	186
III. Assessment of the Current Situation.....	187
E. Nature of the ADR Decision and Enforcement.....	190
I. Summary of the Status Quo	190
II. Problems Identified in the National Legal Systems.....	190
1. Binding and Enforcement	190
2. Suspension of Limitation.....	191
3. Assessment of the Current Situation	192
F. Review of ADR Decisions.....	193
I. Scope For and Limits of Recourse to Judicial Dispute Resolution	193
1. Summary of the Status Quo	193
2. Problems Identified in the National Legal Systems	193
3. Assessment of the Current Situation	194
II. Judicial Review of ADR Decisions.....	194
1. Summary of the Status Quo	194
2. Problems Identified in the National Legal Systems	195
3. Assessment of the Current Situation	196
G. Proposals and Improvements.....	197
I. Regarding Difficulties Arising from the EU Instruments	197
II. Regarding Difficulties Arising from Divergent National Procedural Laws.....	197
III. General Proposals	197
H. Recommendations to the European Commission.....	200

Table of Contents

Index 201

Case Law of the European Court of Justice..... 203

Legislation..... 205

Bibliography..... 207

Annexes 213

Annex I. National Reporters 217

Annex II. Full National Report Template..... 219

Annex III. Selected Data from the National Reports 235

Annex IV. Selected Questions and Responses from the Completed National Reports..... 241