CONTENTS

Tables page xiii

Preface

Tables of legislation xix

Table of EU legislation xxvii

Table of international conventions xxxvi

Table of cases xxxvii

Abbreviations xliii

Introduction 1

PART I Introduction to electronic finance and Internet banking 5

Internet banking in Europe: basic concepts and recent trends 7

> The Internet as catalyst of international financial integration

7

Internet banking in Europe 20

The legal foundations of electronic banking 2 activities 29

> The banker-customer relationship 29

Electronic finance and credit 40
Online securities trading 42

PART II Online banking and international market access: The causes of incomplete financial integration and what to do about them 49

- 3 Legal barriers and necessary regulatory reforms 51

 The causes of incomplete European integration in online financial services 51

 International governance of cross-border electronic commerce and finance 63

 EU policies affecting electronic commerce in financial services 73
- 4 The governance of the European market in cross-border electronic banking activities 82

Introduction 82

Institutional foundations of the single European market in

financial services 84

Mutual recognition of national laws as institutional principle 86

Mutual recognition beyond the EC Treaty: 'home country' control in various forms as institutional anchor of the single financial market 99

Minimum harmonization of national laws and enforcement practices as prerequisites of mutual CONTENTS ix

recognition of national laws and 'home country' control 123

PART III EU harmonization and convergence of national laws relating to electronic banking activities 135

5 Risks and regulatory concerns relating to electronic banking activities and the convergence of national prudential regulatory standards 137

Convergence of national laws and the notion of 'general good' in the single European market 137

Risks and prudential regulatory concerns caused by electronic banking activities 148

Non-EU international initiatives of legal harmonization concerning electronic banking activities 150

EU harmonization measures in the field of prudential banking regulation 154

The prudential regulation of electronic banking activities in key European countries 156

6 EU measures of legal harmonization concerning electronic commerce and distance marketing of financial services, data protection, banking contracts and investor protection 165

179

E-commerce and distance marketing of financial services 165

Privacy and data protection

The harmonization of national laws of
banking contracts 183
Online bank loans and the Consumer
Credit Directive 205
Convergence of national laws regulating the provision of online investment services 213
Assessing the level of convergence of national laws regulating Internet banking 226

PART IV Applicable law and allocation of regulatory responsibility in cross-border electronic banking activities 229

7 Cross-border Internet banking and the principle of 'home country' control in the EU Financial Services Directives 231

Introduction 231

Cross-border Internet banking without the benefit of 'home country' regulation and supervision 232

Mutual recognition of national laws on the basis of 'home country' control in the Banking and Investment Services Directives 237

The notion of 'general good' in the Banking Consolidation Directive 242

'Host country' powers to apply domestic laws in non-prudential matters 243

CONTENTS xi

8	Mutual recognition of national laws under the principle
	of 'country of origin' of the Electronic Commerce
	Directive 262
	Scope of application of the 'country of origin'
	rule 262
	The 'coordinated field' 266
	The implementation of the 'country of origin'
	principle 278
	The case-by-case derogation of Article 3(4)–(6) 281
	The normative impact of the principle of 'country of
	origin' 286
9	Applicable law and jurisdiction in cross-border electronic
	banking contracts 289
	International contracts, conflicts of laws and European
	financial integration 290
	Choice of law and choice of jurisdiction in cross-border
	banking contracts 292
	Choice of law and forum in consumer contracts 296
	Choice of law and the impact of mandatory rules 305
	Conclusions 310
	Select bibliography 319

Index

339