

## Table of Contents

Consortium Members.....	XI
Chapters and Authors.....	XIII
<b>Foreword</b> .....	1
<b>Executive Summary</b> .....	5
<b>Chapter 1. General Structure of Procedural Consumer Protection</b> ( <i>Stephanie Law</i> ).....	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
<b>Chapter 2. Access to Justice</b> ( <i>Remo Caponi and Janek Tomasz Nowak</i> ).....	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
<b>Chapter 3. Consumer Actions before National Courts (Burkhard Hess and Piet Taelman).....</b>	<b>95</b>
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
<b>Chapter 4. Actions for Collective Redress (Stefaan Voet).....</b>	<b>157</b>
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
<b>Chapter 5. Consumer Alternative Dispute Resolution (Chris Hodges).....</b>	<b>177</b>
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
<b>Annexes</b> .....	<b>213</b>
Annex 1. National Reporters.....	217
Annex 2. Full National Report Template.....	219
Annex 3. Selected Data from the National Reports.....	235
Annex 4. Selected Questions and Responses from the Completed National Reports .....	241