Judicial Training Project

Fundamental Rights In Courts and Regulation (FRICoRe)

FRICORE CASEBOOK

EFFECTIVE CONSUMER PROTECTION AND FUNDAMENTAL RIGHTS

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The present Casebook builds upon the *RE-Jus Casebook. Effective Justice in Consumer protection.* Particularly, chapters 1 through 7 are based on RE-Jus training materials, subject to revision, integration and update in the present drafting.

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Scientific Coordinator of the FRICoRe Project:

Paola Iamiceli

Coordinator of the team of legal experts on Effective Consumer Protection:

Paola Iamiceli; Fabrizio Cafaggi

Project Manager:

Chiara Patera

Coauthors of this Casebook (in alphabetical order):

Chiara Angiolini
Mireia Artigot
Fabrizio Cafaggi
Sandrine Clavel
Sébastien Fassiaux
Tomàs Garcia-Micó
Carlos Gómez
Fernando Gómez
Mateusz Grochowski
Paola Iamiceli
Rosa Milà
Chiara Patera
Sandra Passinhas
Sonia Ramos
Gianmatteo Sabatino

Note on national experts and collaborators:

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José Mª Blanco Saralegui
Aurelia Colombi Ciacchi
Silvia Ciacchi
Marta Fernandez De Frutos
Maud Lagelée Heymann
Federica De Gottardo
Ksenija Dimec
Rossana Ducato
Giuseppe Fiengo
Stéphanie Gargoullaud
Ilaria Gentile
Petri Helander
Thomas Horvath
Mareike Hoffmann
Pamela Ilieva
Monika Jozon
Meeli Kaur
Sil Van Kordelaan
Madalina Moraru
Viola Nobili
Michal Notovny
Sandra Passinhas
Charlotte Pavillon
Tobias Nowak
Valentina Rustja
José Mª Fernández Seijo
Markus Thoma

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Introduction: A Brief Guide to the Casebook

Cross-project methodology

The FRICoRe Casebook on "Effective Consumer Protection and Fundamental Rights" builds upon the collaborative venture developed in previous projects of judicial training and, more recently, in the Re-Jus project. The core element of its methodology concerns the active dialogue established between **academics and judges of various European countries** on the role of the Charter and that of its article 47, in particular, in the field of consumer law. In continuity with previous projects, including Re-Jus, this collaboration combines rigorous methodologies with judicial practices, and provides the trainers with the sort of rich comparative material that should always characterize transnational trainings. We firmly believe that transnational training of judges should be based on a rigorous analysis of judicial dialogue between national and European courts and, when existing, among national courts. Training includes not only the transfer of knowledge, but also the creation of a learning community composed of different professional skills. Like in previous experience, this casebook is due to evolve both in content and in method over time, with additional suggestions arising from its use in training events.

Like in previous projects, **judicial dialogue** is a key dimension of the approach followed in this Casebook. We investigate the full life cycle of a case, from its birth with the preliminary reference, to its impact in different Member States. We examine the ascendant phase and analyse how the preliminary reference is made, and whether and how it is reframed by the Advocate General and the Court. We then analyse the judgments and distinguish them according to the chosen degree of detail when they provide guidance both to the referring court and to the other courts that have to apply the judgments in the various Member States. Compared with Re-Jus Casebook, a larger set of national case law could be considered in this edition.

Judicial dialogue develops both vertically and horizontally, at both national and supranational levels. Preliminary references represent the main driver of this dialogue. Linked with preliminary references procedures, horizontal interaction among national courts takes place when the principles identified by the CJEU are applied in pertinent cases, mostly in the same and sometimes in connected fields. Also depending on the type of reference enacted, the guidance provided by the CJEU may consist in specific rules or in general principles to be applied. Very frequently the latter may consist in the principle of effectiveness or the one of equivalence, due to be balanced against the principle of national procedural autonomy (see cases C-33/76 Rewe; C-295/04 Manfredi). Diverging approaches may be provoked by the same CJEU's judgement and a national vertical dialogue may emerge, involving constitutional courts, higher courts and first instance courts, as often occurred in the Spanish case law on unfair terms and in other contexts. In several cases, legislators step in, triggering new streams of judicial dialogue both at national and EU levels. Different paths may be simultaneously or sequentially followed by different courts and legislators in different Member States, as, for example, in the field of unfair terms in loan agreements where Spanish and Hungarian courts and legislators have simultaneously engaged into a very dynamic discussion concerning the content, the time of effect and the consequences of certain terms deemed unfair in previous practice. Comparing different stories, taking into account national specificities, enables national courts, different from the referring ones, to better anticipate the impact of EU law on the adjudication of national cases. In this regard, it should be noted that the CJEU clearly signals the degree of specificity of the question and provides the answer accordingly. Sometimes it gives a very context-specific answer,

not easy to generalize or to apply to other legal systems; sometimes it defines general principles that can be flexibly applied to different legal systems. This is clearly the case for those judgments on *ex officio* power and *res judicata* where procedural laws significantly differ across Member States. This is why the **comparative perspective** provided by this Casebook may clarify the impact of the judgment or of a cluster of judgments addressing the same issue (for example *ex officio* power to examine unfairness of contract clauses) on the case law of Member States different from the one of the referring court. In some cases, the impact can be examined through judgments expressly referring to the CJEU's decisions; in other cases, the Casebook suggests interpretative tools to address issues discussed in national case law through the lens of the CJEU's decision. The **impact analysis** is very important for judges other than the referring one. Their effort to interpret and to adapt the judgment to their national legal context is often underestimated. While formally the CJEU judgments are binding on Member State courts, their application necessitates a careful analysis of which substantive and procedural rules may be affected by the judgment, in particular the application of Article 47 of the Charter and the principle of effectiveness.

Based on the methodology adopted in Re-Jus, the analysis does not focus on single CJEU judgments but on **clusters of judgments** around common issues. Often, CJEU judgments touch on many questions depending upon how the preliminary references are framed, and it might be more effective to choose a subset of complementary issues and examine them in sequence across several cases, rather than to focus on a single judgment. This approach may add a bit of complexity, but it reflects the problem-solving approach, rather than the conventional doctrinal perspective. The internal coordination of chapters ensures the possibility of reconstructing the judgment across different chapters.

The casebook is complemented by a **Database** (https://www.fricore.eu/content/database-index) that endorses the methodological approach of judicial dialogue, giving continuity to the one established in the Re-Jus Project and integrating the whole set of materials therein developed. It is organized around EU judgments and their impact on national legal systems. Two series of national judgments are examined in the Database: those directly concerning cases brought before the CJEU within a preliminary reference procedure, and those that apply or take into consideration the CJEU case law when addressing national cases outside of a referral procedure. Hence, the database is specific, and it reflects the idea that judicial dialogue is a pillar of EU consumer protection.

We would like to encourage in training courses organized by national schools both the use of the Casebook and that of the Database, which was subject to constant updating during the course of the project, thanks to contributions coming both from the Schools of the Judiciary and from the workshops' participants.

The main issues addressed and the new lines of the FRICoRe Project

Building on the Re-Jus Casebook on Effective Consumer Protection, the FRICoRe edition inherits some core issues therein addressed, primarily the **impact of the Charter** and, particularly, of **article 47 on the right to an effective remedy and to a fair trial** on judicial dialogue both in EU and national case law in the field of consumer protection. The often linked application of the principle of effective judicial protection as well as the one of other principles, such as those of equivalence, proportionality, dissuasiveness, good administration also continue to attract special attention in the Casebook.

Compared with the Re-Jus edition, the present one develops **two new lines of analysis**. Firstly, it pays special attention to the technological and digital dimension of consumer markets and consumer transactions: such dimension not only modifies the contexts and modes in which consumer infringements

take place (sometimes amplifying their effects) but poses new legal issues, that require new forms of consumer protection to be tuned against the principles of effective protection and the ones of proportionality and dissuasiveness. Secondly, further developing an approach started in Re-Jus, the analysis aims at considering the link between different areas of EU law and fundamental rights in order to understand to what extent the instruments of effective consumer protection should be adapted when some fundamental rights are at stake, such as protection of personal data or the right to health.

Both these two new lines of analysis (the digital element of consumer markets and the cross-sector dimension of consumer protection) reflect the new approach taken by EU consumer law within **recent reforms**, as shown here below.

The new legislative framework represents as such a third element of novelty within the FRICoRe Casebook. Indeed, a profound revision of consumer protection law has started with the Consumer Protection Cooperation Regulation (Reg. EU 2017/2394), being further developed with the adoption of the twin Directives on certain aspects concerning contracts for the supply of digital content and digital services (Directive (EU) 2019/770 of 20 May 2019) and on certain aspects concerning contracts for the sale of goods (Directive (EU) 2019/771 of 20 May 2019), the Regulation (EU) 1150/2019 of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services and, most recently, the Directive (EU) 2019/2161 of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules. Still pending is the proposal on collective representative actions on which a General Approach has been agreed within the institutional trilogue[1].

All these initiatives are part of the Digital Agenda part of the Digital Agenda for Europe defined by the EU Commission within the context of the Europe 2020 Strategy defined by the EU institutions in 2015. The need to boost **digital market and e-commerce** in the internal market has been one of the main drivers of these reforms together with the need to provide more effective consumer protection in circumstances in which digitalization may increase vulnerability, ease unfairness and lack of transparency. As made clear in the CPC Regulation the challenge does not only imply the definition of new rules and duties but also and more crucially requests higher effectiveness on the enforcement side, including a better coordination among competent authorities within and across Member States.

This coordination is even more crucial if the **cross-sector dimension** is taken into account, as mentioned above. Indeed, consumer protection often interacts with other forms of protection of rights, such as data protection, the protection of health or the like. Moreover, the EU legislation itself adopts sector-specific instruments due to regulate markets and provide protection to market users, including consumers. In several cases, a national judge is confronted with multiple legislative sources and multiple sets of remedies to be potentially used; or, the court is requested to judge over the assessment provided by one of many administrative authorities potentially involved in addressing a particular business practice, even more if its impact spreads cross-border. The pending proposal on representative collective action emphasizes this aspect when it establishes that the proposed directive shall apply to representative actions brought against infringements by traders of provisions of the Union listed in Annex I and including, eg. EU legislation on data protection, financial services, travel and tourism, energy, telecommunications, *when these infringements harm or may harm the collective interests of consumers.* To what extent can the combination between general consumer instruments and sector-specific measures improve the effectiveness of consumer protection? How should these be coordinated so that effective remedies may be provided? When reviewing decisions taken by administrative authorities, should the court consider the possible

[1] Proposal for a Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC - General Approach 2018/0089(COD).

interactions among multiple authorities and apply the principle of proportionality and the one of dissuasiveness to avoid that a lack of coordination leads to over-deterrence, disproportionate sanctions or *bis in idem*? The FRICoRe Casebook will deal with these issues (see, particularly, chapters 3 and 9, and even more specifically the Appendix to this Introduction concerning the consumer status and the scope of application of consumer protection).

The structure of the Casebook: some keys for reading

The developments occurred in judicial dialogue show that the application of the Charter, and in particular **Article 47,** is promoting substantive and procedural changes in consumer protection. Its link with general principles of EU law, particularly the **principle of effective judicial protection and the one of equivalence**, for long established in the EU case law, has enabled the Court to gradually expand the force and scope of the right to an effective remedy as a fundamental right, which is capable of direct application, even in horizontal relations among private parties (*Bauer*, C-569/16 and 570/16). Beyond the demolitory effect brought by the principle of effectiveness in cases in which national procedural rules (eg, on limitation periods, evidence or appeal) could prove too burdensome for harmed consumers, the affirmative dimension of effective justice is more and more invoked. The need for positive answers in terms of effective remedies challenges even more the principle of national procedural autonomy, despite its continuous recognition by the CJEU in its rulings. **Conforming interpretation** remains the main path to follow in order to overcome possible conflicts between EU principles and national legislation or established case law; **disapplication** is available, however, should interpretative instruments being insufficient in this regard.

Moving from this perspective, the FRICoRe Casebook provides judges and other legal experts with concrete examples of judicial dialogue leading to identify specific forms of conforming interpretation or disapplication of national rules in the light of the Charter and other EU general principles.

Chapter 1 starts this exploration having regard to a consolidated trend in EU consumer case law, that of **expansion of *ex officio* judicial powers in civil litigation**: powers to ascertain the consumer status of parties; to ascertain the unfair nature of contract terms or other infringements; to make investigation accordingly; to provoke parties' intervention so that their views may be confronted in a fair trial. In all these regards expanded judicial powers counterbalance consumer weakness, providing access to an effective space for a fair trial and an effective remedy.

The concrete analysis of cases shows that the implications deriving from this approach are strong and critical. Firstly, because such expansion of judicial powers challenges the principle of national procedural autonomy in several regards, including the principle of demand in civil litigation and, at least partially, the one of *res judicata*. Secondly, because the concrete implications of these trends may be very different depending on the type of secondary legislation adopted at EU level or on the Member State in which litigation takes place. For example, although in *Banco Primus* the CJEU has concluded that the principle of *res judicata*, intrinsic to national procedural autonomy, should not limit the judicial power to ascertain the unfairness of clauses that have not been assessed in previous decisions, become final, concerning other clauses of the same contract, in a more recent case (*Salvoni*, C-347/18) the principle of *res judicata* has been considered an obstacle against the exercise of *ex officio* powers to inform the consumer about the right to apply for refusal of the recognition or enforcement of a judgment abroad under art. 45, Reg. 1215/2012. The availability of specific measures within EU Regulation has probably induced the Court to be more cautious in challenging the principle of *res judicata*, whose strength has remained questioned after *Banco Primus*. This example is even more striking if the different implications at national level are considered. So, for example, in the Spanish context the judgment issued in *Banco Primus* has brought the Constitutional Court (28 February 2019) to exclude that an execution admission judgement may imply a tacit assessment of all contractual terms, being mandatory an express assessment in this regard. By

contrast, under consolidated Italian case law, *res judicata* expands its effects not only on explicit content of the judgment become final but also on the grounds, representing its logic antecedent, though implicit (Cass., 28 November 2017, n. 28318; Cass., S. U., 12 December 2014, n. 26242). The issue is due to attract further attention in the EU judicial dialogue in the light of a new preliminary reference presented by an Italian judge (*Banco di Desio e della Brianza and Others*, Case C-831/19).

Chapter 2 examines the role played by the principle of effective judicial protection in CJEU competition cases concerning private antitrust enforcement: this role, highly influential in the development of EU secondary law on **damages in antitrust cases**, may suggest future developments in neighbouring areas of consumer law, such as that of unfair commercial practices. The CJEU, in the landmark decision Courage (C-453/99) and Manfredi (C-295/04) had referred to the principle of effectiveness as the main criterion to guide national courts in providing judicial relief in asymmetrical relations between consumers and business entities. Consequently, national judges had derived from the principle of effectiveness case-by-case solutions pertaining to the proof of the causal link between antitrust infringement and damage, to limitation periods, to the amount of compensation, to jurisdiction. Some of the solutions developed by courts have now been embraced by Directive (EU) 2014/104, while both European and national case law are trying to define the role of the principle of effectiveness in shaping the boundaries of private antitrust enforcement. So, national decisions concerning the proof of the causal link between infringement and damages and the evidence status of NCAs decisions still represent, in absence of clear EU rules, the main reference point. Furthermore, the CJEU, although in decisions not directly concerning consumers, struggled to strike a balance between public and private enforcement, for instance in cases concerning leniency procedures, as such covered by confidentiality measures (for instance in *Pfleiderer*, C-360/09). More recently, the CJEU used the principle of effectiveness to expand the scope of application of private enforcement, for instance by extending protection to situations not covered by the Directive (*Cogeco*, C-637/17) or by allowing private parties to seek damage against a business entity which, in concrete, is the successor of the infringer (*Skanska*, C-724/17).

The chapter addresses some of the main issues arisen in the past decade, trying to highlight which principles and practical solutions are relevant for ensuring consumer protection in private antitrust enforcement cases. Furthermore, the chapter briefly analyzes recent national case law which, on the basis of the principle of effectiveness, sought to provide consumers with restitutory remedies linked to the nullity of contracts whose content was affected by anti-competitive agreements. The issue stimulates further discussions as well as hypothetical questions to be referred to the CJEU.

Chapter 3 addresses the **relationship between judicial and administrative consumer protection**. Even lacking a direct application of Article 47 CFREU to purely administrative enforcement procedures, the general principles of effectiveness, proportionality and dissuasiveness, together with the principle of good administration, are influencing the functioning of these proceedings as becomes clear when the administrative enforcement proceeding is followed by a judicial one, either in the form of judicial review or as a follow-up procedure, eg due to award damages. Indeed, the CJEU has considered judicial review as an intrinsic element of Article 47 CFREU; so for cases in which judicial enforcement is complemented by administrative proceedings due to create registries of terms found unfair, which are therefore banned towards any possible professional willing to use those or equivalent ones (*Biuro*, C-119/15).

The possible role of the principle of effective consumer protection in the field of administrative enforcement concerns not only the coordination between administrative and judicial enforcers but also the coordination among administrative authorities, especially when multiple bodies are in charge of monitoring the market and their relationship is not specifically defined in law, both at national and, with further implications, at supranational level (see Reg. EU/2017/2394). Having regard to the co-existence of multiple administrative authorities, some of these in charge of specific sectors (eg.

telecommunications), *Chapters 3* shows how, in EU case law, the competence of either authority is defined taking into account the need for effective application of EU law, which remains a linked component of effective consumer protection (*Wind Vodafone,* Joined Cases C-54/14 and C-55/17). In the near future, similar questions could be brought before the Court of Justice in the light of article 47 and the one of the principle of proportionality and dissuasiveness. Indeed, the need for a better coordination among administrative authorities and between administrative and judicial enforcers, not only helps to avoid loopholes in the enforcement and lack of effectiveness (of EU law and consumer protection); it also contributes to guarantee an adequate level of deterrence and prevent the adoption of disproportionate measures.

The role of administrative enforcement as means for effective consumer protection is today clearly acknowledged in EU legislation: so for the cited Reg. EU/2017/2394 on Consumer Protection Cooperation as well as in the pending proposal on representative actions for the protection of the collective interests of consumers (COM/2018/0184 final-2018/089 (COD)), covering actions brought before administrative or judicial authorities. The **collective dimension of consumer protection** (which is somehow an intrinsic element of administrative enforcement and may be achieved through judicial enforcement, too) is the subject matter of *Chapter 4*. In this regard, the role of the principle of effectiveness, as evidenced in the courts' dialogue with CJEU, has been at least twofold. On the one hand, at times in which national legislation has not been harmonized yet through EU intervention except for soft law, the principle of effectiveness has helped national courts to interpret national procedural legislation consistently with the need to improve consumer protection: so, eg, by acknowledging the *erga omnes* effects of the *in abstracto* ascertainment referred to unfairness of contract terms (*Invitel*, C-472/10; *Biuro*, C-119/15), or by limiting the suspensive effects of collective proceedings with respect to individual ones (*Sales Sinuès*, C-381/14). On the other hand, the Court has refrained from taking too proactive an approach, by filling in gaps left by EU and national legislation (*Schrems*, C-362/14, AG Opinion). So, eg, in the *EOS KSI* case (C-448/17), the principle of equivalence has been applied rather than the one of effective protection; as a result, the right of intervention by consumer organizations in consumer proceedings, initiated by the professional without the consumer's objection being lodged, shall be assessed comparing national procedural rules that are applicable in disputes falling within the scope of either EU or national law. This more cautious approach is part of an implicit dialogue with the EU legislator, that, within the framework of article 47 CFR and the one of general principles of EU law, for long defined by the CJEU, has proposed the cited Directive, now close to final adoption.

The adoption of a directive on representative actions will certainly offer new opportunities for judicial dialogue in the light of the article 47, CFR. The nature of qualified entities, the scope and effects of so called injunctive and redress measures, the coordination among and between administrative and judicial proceedings, the effects of previous decisions on follow-up proceedings, the individual consumer's right to join or depart from collective actions: all these aspects will definitely engage, first, national legislators and, later, courts in a collective venture due to define the future framework of collective consumer protection.

Chapter 5 examines the impact of the principles of effectiveness, proportionality and dissuasiveness on the **choice and application of civil remedies** in consumer cases in three areas: unfair terms, unfair commercial practices and consumer sales. Well beyond the scope of article 47 CFREU, these principles are shaping the national rules on the adjudication of civil remedies, posing continuous challenges to the daily working of civil courts.

High attention is paid to a topic become crucial in recent EU case law: the extent of judicial powers to intervene in **integrating contract terms**, once they have been declared unfair and therefore not-binding. While article 47, CFR, as such has been only occasionally referred to in these cases (*Sziber*, C-483/16),

the Court has mostly combined the principle of effective judicial protection with the one of dissuasiveness and proportionality. As a general rule, the pure non-bindingness of unfair terms has been considered as an effective measure able to ensure an adequate level of deterrence (*Credit-Lyonnaise*, C-565/12; *Home Credit*, C-42/15). Indeed, in the view of the CJEU, the dissuasive effects of non-bindingness would be undermined by judicial intervention, that allows for terms' substitution by means of judicial moderation or application of legislative default provisions (*Banco Espanol*, C-618/10).

Recent developments of judicial dialogue, mainly involving Spanish and East-European courts (particularly, the Hungarian ones), show that many distinctions should be considered by the national judge. First, the penalty function of non-bindingness should be subject to the proportionality principle; it is for the national judge to assess whether term's non-bindingness represents a proportionate measure in respect of the infringement's seriousness (*Home Credit*, C-42/15). Second, when the contract may not continue to exist without the non-binding clause, term's substitution becomes the only available way to substitute for the formal balance established by the contract between the rights and obligations of the parties real balance re-establishing equality between them (*Kasler*, C-26/13). Recent judgments examined in *Chapter 5* also address the extent to which (subjective or objective) consumer's interest shall be taken into account when the national judge needs to make a choice between mere non-bindingness or terms' substitution, and whether a third option exists, consisting in total contract nullity, when the contract may not continue in existence without the non-binding term and setting aside is either not-harmful for the consumer (*Dunai*, C-118/17) or, though harmful in abstract terms, the consumer opposes to the protection provided through partial nullity and term's substitution (*Dziubak*, C-260/18).

Future evolutions in judicial dialogue will show to what extent the need to provide effective, proportionate and dissuasive remedies through contract non-bindingness (mainly invalidity, partial or total) will also extend to the area of unfair practices. So far, the principle of effectiveness has not been deemed a sufficient reference for targeting invalidity as *the* effective remedy against unfair practices, lacking any automatic link between unfair practice and unfair term (*Perenicova*, C-453/10; *Bankia*, C-109/17). The new legal framework brought by Directive 2019/2161, amending the UCPD and expressly calling for 'effective and proportionate remedies' against unfair practices (including contract termination) may engage EU and national courts in a new confrontation for the years to come (see art. 11a).

Together with the use of invalidity and termination, the role of restitution gains special attention in the CJEU's eyes through the lens of article 47, CFR, and the principle of effectiveness (*Naranjo*, C-154/15; *Dunai*, C-118/17). So, not only in the field of unfair terms and unfair practices, but also in the area of sales, where the new Sale Directive (EU/2019/771) has made contract termination relatively more accessible for consumers, though ensuring an effective access to repair and replacement. On the latter, the new Directive only partially incorporates the principles applied by the CJEU in *Weber and Putz* (C-65/09), which leaves space for further developments in judicial dialogue.

Chapter 6 builds another bridge: one **between judicial procedures and settlement procedures or other alternative dispute resolution** (ADR and ODR) **mechanisms**. The application of procedural safeguards to these procedures, more and more affected by EU secondary legislation, is greatly influenced by the role played by the CJEU, starting from the *Alassini* case (Joined Cases C-317/08, C-318/08, C-319/08 and C-320/08), that remains a milestone in any case law on consumer ADR although the proceeding has never been resumed before the national court.

Chapter 7 looks at the perspective of **cross-border cases**, the application of private international law, and the impact recently played by the CJEU through the lens of the principle of effectiveness as applied to consumer cases. Both the identification of competent jurisdiction and the identification of applicable law require a due recognition of the role played by the principle of effectiveness and Article 47 in cross-

border cases. This application forces rethinking the interpretation of Rome I and Rome II and Brussels *bis* Regulation in the area of consumer protection in light of the role of fundamental rights.

Chapter 8 leads national judges in the world of **online platforms**. The principle of effective consumer protection is used as a lens through which CJEU's judgments may be examined with special regard to issues linked with the digital dimension of trade. Eg, the extent to which a consumer, showing high competence on the functioning of digital platforms and social networks, can be still considered a consumer (*Schrems*, C-362/14), or a natural person, posting renting advertisements on the web, may be qualified as a professional or a consumer depending on a long list of factors (*Kamenova*, C-105/17), or the extent to which the mere possibility of creating a durable record of an electronic communication represents an effective safeguard for e-purchasers (*Jaouad El Majdoub,* C-322/14), or certain contract terms and commercial practices become particularly misleading within a digital environment and call for a special assessment that takes into account the cross-border scope of platform's activity (*Amazon,* C-191/15): all these aspects may be examined through the lens of effective consumer protection in order to ensure that infringements are found and remedies applied consistently with the characteristic of electronic commerce and the objective of high protection of consumers under art. 38, CFR.

Moving from this perspective, the issue of platform's liability is particularly crucial: can the consumer seek from the platform the same remedies he/she could seek from the supplier offering goods or services through the platforms? Shall, by contrast, the platform enjoy the same 'immunity' awarded by the E-commerce directive for intermediaries remaining 'passive' in respect of the transaction taking place through the platform? Is this approach, read together with the notion of platform's control, developed by the Court in *Uber* (C-434/15) and *Airbnb* (C-390/18) cases, consistent with the principle of effective consumer protection and article 47, CFR?

Introducing the cross-sectoral analysis, *Chapter 9* deals with the interactions between consumer protection and data protection. Although most of the above examined applications of article 47 CFR and of the principle of effective protection have been developed with specific regard to consumer cases and EU secondary legislation in the field of consumer law, a question arises to what extent they may be extended to other areas of EU law. In fact, judges may be confronted with cases in which the same practices represent infringements of consumer rights and other rights, particularly fundamental rights, protected under EU law. Breach of information duties may violate consumer law and deprive data subjects of rights acknowledged by the GDPR; contract terms, aimed at obtaining consent for data processing for totally unspecified finalities, may be found unfair under the UCTD and in breach of the GPDR. Which associations may represent the interests of these victims in collective redress procedures: consumer associations, data protection ones or both? Can consumer remedies be extended to protect data subjects to improve the effectiveness of both consumer protection and data protection?

Chapter 10 deals with a different type of **interaction**: the one **between consumer protection and the right to health** (art. 35, CFR; art. 168, TFEU). Focusing mostly on product liability, the analysis shows how the reference to health as a fundamental right enters the evaluation on effectiveness of consumer protection remedies: encouraging the use of presumptions (*Sanofi*, C-443/12), the application of concurring liability regimes, such as those concerning product liability and service liability (*Dutreux,* C-495/10.), the introduction of information duties aimed at reducing the burden of proof for consumers (*Novonordisk*, C-249/09).