

The Common Frame of Reference: A View from Law & Economics

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Consumer Law in the DCFR

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I. Introduction

The presentation of the *Draft Common Frame of Reference* (henceforth "DCFR")¹ was the incident in the field of European private law that drew most attention in the present decade. Nevertheless, up to now the issue of consumer law in the DCFR has only been shortly touched upon.² This is quite remark-

¹ Cf. C. von Bar/E. Clive/H. Schulte-Nölke (eds.), *Principles, Definitions and Model Rules of European Private Law, Draft Common Frame of Reference (DCFR), Outline Edition* (2009).

² For the recent discussion of the DCFR and the CFR respectively with references to consumer law cf. W. Ernst, *Der "Common Frame of Reference" aus juristischer Sicht*, (2008) 208 AcP 248, 274-277; H. Eidenmüller et al., *Der Gemeinsame Referenzrahmen für das Europäische Privatrecht*, (2008) JZ 529 ff.; N. Reich, *Der Common Frame of Reference und Sonderprivatrechte im "Europäischen Vertragsrecht"*, (2007) 15 ZEuP 161 ff.; N. Reich, *Die Stellung des Verbrauchers im „Gemeinsamen Referenzrahmen“ und im „Optionalen Instrument“*, in: L. Thévenoz/N. Reich (eds.), *Liber amicorum für B. Stauder* (2006), 357 ff.; G. Wagner, *Soziale Frage und CFR*, (2007) 15 ZEuP 180 ff.; see also G.C. Moss, *Contracts between consumer Protection and Trade Usages*, in: R. Schulze (ed.), *Common Frame of Reference and Existing EC Contract Law* (2008), p.65 ff.; M. Hesselink, *Common Frame of Reference Social Justice*, (2008) 4 ERCL 248, 262 ff.; see also the contributions to (2008) *ERA Forum*, 9 Suppl. 1, *European Contract Law, the contributions to C. von Bar/H. Schulte-Nölke/R. Schulze* (eds.), *Der akademische Entwurf für einen Gemeinsamen Referenzrahmen: Kontroversen und Perspektiven* (2009), and the