CONSUMER CREDIT, DEBT
AND INVESTMENT IN EUROPE

Produced under the auspices of an EU-funded Marie Curie research programme, this volume analyses vulnerability in European private law and scrutinises consumer protection in credit and investments in the context of the recent turmoil in financial markets and EU harmonisation initiatives in the area. It explores key issues such as responsible lending, the disclosure of information, consumer confidence, the regulation of consumer investment services and the protection of bank depositors. The chapters emanate from the ‘Consumer Protection in Europe: Theory and Practice’ duo colloquium which explored consumer protection in Europe in its theoretical and practical dimensions. These topics are even more relevant today given the passage of the Consumer Rights Directive, the appointment of an Expert Group on a common frame of reference, the Green Paper on European Contract Law and the ongoing deliberations surrounding the Common European Sales Law.

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FOREWORD

It is a great pleasure and honour to be asked to write a foreword to this impressive book, which is yet another timely and thoughtful set of essays compiled by James Devenney and Mel Kenny. These are becoming a welcome regular addition to the consumer law library. These essays relate predominantly to consumer credit and financial services and bear testament to the recent growth in academic interest in consumer credit law: a topic that has for a long time been relegated to the voluminous practitioner-orientated encyclopaedias. In this foreword I would like to reflect on the reasons for the growth of scholarly interest in consumer credit.

Undoubtedly the adoption of a new EU Directive, which was more far reaching and intrusive on national legal systems than its modest predecessor, has been an impetus for researchers to focus on this topic. They naturally seek to understand what the Directive means both for EU consumer law and for national implementation. Indeed it seems to underline the EU emphasis on consumer law as a mechanism for market integration, with an unwillingness to move far beyond those ambitions and impose real social protection mechanisms besides information-based protection. Its maximal harmonisation agenda of course raises interesting challenges for national legislators keen to preserve as much as they can for their national laws. The limited scope of the provisions covered in the Directive equally means that in any event its market integrated goals are inevitably limited.

Second, in the United Kingdom at least, we have seen a lot of domestic activity. Even before the implementation of the Directive there were the Consumer Credit Act 2006 and other regulatory reforms, as well as burgeoning case law driven by lawyers and claims management companies seeking to exploit the technicalities of the Consumer Credit Act 1974 for the benefit of overindebted consumers.

Third, the financial crisis both highlighted the problems of overindebtedness that increased in its wake and put the spotlight on consumer
lending as a possible cause of the crisis. Whilst responsible lending was already being discussed, it became obvious that its introduction would be akin to closing the stable door after the horse had bolted, for the financial crisis was in large measure the result of such excessive lending. Ironically the problem at the moment is a lack of responsible lending by the banks, who have become very cautious about lending in contrast to their excessive lending in the run up to the crisis. The responsible lending principle was strongly watered down in the final version of the Directive, but in truth its content and purpose were not sufficiently articulated by those that favoured its adoption.

Finally, financial services and credit are pervading every aspect of the ordinary citizen’s life. The average worker is provided with an increasingly broad range of products that he has to engage with to provide for the basics of life, such as a pension. As recent higher education reforms illustrate, youngsters also will have to leave university only too aware of what it means to live life in debt.

As I write, the UK government is consulting on whether the framework of the Consumer Credit Act 1974 should be retained or replaced by one based on the Financial Services and Markets Act 2000. As I advocated such a step to introduce simpler structures based on a principle-based approach I naturally welcome this debate. However, change brings costs and risks for all parties and needs to be undertaken after careful reflection, including taking account of comparative experiences. The chapters in this collection and their authors will inform debate in this area and ensure that this will remain a lively field of research for many years to come.

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