

CONTRACT LAW OF THE INTERNAL MARKET

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Stephen WEATHERILL



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Cambridge – Antwerp – Portland

Intersentia Ltd
Sheraton House | Castle Park
Cambridge | CB3 0AX | United Kingdom
Tel.: +44 1223 370 170 | Fax: +44 1223 370 169
Email: mail@intersentia.co.uk
www.intersentia.com | www.intersentia.co.uk

Distribution for the UK and Ireland:

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PREFACE

Two principal ambitions have animated the writing of this book on *Contract Law of the Internal Market*.

The first ambition is to demonstrate to contract lawyers that there are constitutional limits to the role of the EU in acting in the field, but that full appreciation of the nature of those limits, and the consequences they entail for the shaping of an EU contribution to the making of contract law in Europe, requires awareness of a complex interaction of often ambiguous constitutional rules, often politically inconsistent institutional rhythms and often evasive judicial pronouncements. A contract lawyer today needs also to be an EU lawyer.

The second ambition is to demonstrate to EU lawyers that the intervention of the EU in contract law – through judicial application of the free movement and competition rules and through legislative harmonisation – is not simply a niche area that has grown erratically but ultimately remains on the edges of the EU's core public law activities, but rather that the rise of EU contract law asks some vividly important questions about the principle and practice of conferred competence and about the choice of priorities in market regulation as protective instincts and deregulatory impulses collide. This has long been visible in the field of consumer contract law and labour market regulation, but the adjustments made by the Treaty of Lisbon, especially but not only the grant of binding effect to the Charter, have sharpened the interest. An EU lawyer today does not need to be a contract lawyer, but he or she could learn a lot from appreciating the contract law of the internal market.

I have been writing in this area for almost twenty years and I am very pleased to have had the opportunity to bring together my thoughts in this book. Contract law in the EU is largely, though not exclusively, driven by the pursuit of the internal market and this exposes it to the accusation that the EU *diminishes* a proper understanding of the place of contract law. The thematic argument that forms the core of the book is that it is important in understanding the EU's impact on contracts and contract law that the EU has only a limited competence, but that, largely in consequence on the generous scope of the internal market as a concept, those limits are less of a restraint than may initially be supposed and that, moreover, pursuit of (in short) social justice within contract law is a lot less constitutionally elusive than is sometimes claimed. I don't want to dismiss the allegation that the EU has an internal market bias, but I do want

to insist that the internal market is built on a more stable and rich foundation than mere deregulation. There is, as this book shows, contractual autonomy that is regulated within the EU, by free movement law, by competition law, by the Charter and through the process of re-regulatory legislative harmonisation and anti-discrimination law more generally. That is my understanding of *Contract Law of the Internal Market*.

I have enjoyed working with Intersentia and I am grateful to them for offering me very good support, from start to finish.

The book states the law as at 30 April 2016.

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