CODIFICATION OF FRENCH AND LUXEMBOURG CONSUMER LAW: ARE FRENCH AND LUXEMBOURG CONSUMER CODES GOING THE SAME ROAD?[1]

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Abstract: This article intends to study from a comparative standpoint the reasons of codification of consumer legislation in France and Luxembourg. Based on these two experiences, it analyses the impact of the codification process on these two legal systems as well as on the discipline of consumer law.

Keywords: Consumer law. Civil law. Comparative Law. Codification Process. Definition of Consumer Law.

1 Introduction

France and Luxembourg are among the three countries in continental Europe that have decided to codify consumer law, the third one being Italy.[2] The two codes, respectively enacted in 1993 and 2011, seek to give more coherency, visibility and accessibility to consumer legislation, although their contents paradoxically differ. In this article, I intend to analyse from a comparative standpoint the reasons why such a choice was made. I will demonstrate that although the two legislatures were motivated by similar reasons to undergo a codification process, the content of the two codes differ. This phenomenon is due partly to policy choices and partly to the difficulty of defining consumer law, a discipline that transcends the existing branches of law of the civil law tradition. Yet the process of codification is not neutral and has important consequences on the legal system. In the second

[1] This is a revised version of an article dedicated to the memory of Prof. Maria Rosa Llacer Matacas in the Miscellaneous in her honour that will be published by Dykinson Editorial, Barcelona, 2017.

[2] The Italian code was enacted in 2005.

part of the article, I thus analyse the impact of consumer codes on the two legal systems, focusing on the so-called process of "de-codification" of existing codes by consumer codes. This process should not be considered as a de-construction of the legal system since it leads, in my opinion, to the acknowledgement of consumer law as a new branch of law. I also therefore argue that consumer codes should not be presented as formal codes, as they usually are, but rather as "real codes" going far beyond a mere objective of coherency, visibility and accessibility to consumer legislation.

2 Reasons for consumer law codification

The history of consumer law codification is very similar in France and Luxembourg. This similarity is due to reasons for codification that are largely common and not related to a will to re-codify civil law, as we will see. The rationales of codification were pragmatic. The French and Luxembourg legislatures sought to reorganize their legal systems in order to give more visibility to some provisions. In the two countries however, the provisions at stake were not exactly the same. Therefore, if the motivations for codifying were common to the two countries, the codes contents slightly differ.

2.1 Common motivations for a similar process

In France, consumer law codification can be described as a "personal choice" of a scholar: Professor Calais-Auloy. This choice was – at least in the mind of Professor Calais-Auloy and according to his words "un code, un droit" – aimed at considering consumer law as a specific branch and not a sub-part of general private law ("*droit civil commun*").[3] As President of the special Committee established to reflect on consumer law codification, Professor Calais-Auloy had a particular objective in mind: to merge the existing statutes regarding consumer law and to draft new principles in one body of legislation: the Consumer Code.[4] Whether the result of the legislative process that led to codification of consumer law in 1993 met his expectation is another story.

[3] CALAIS-AULOY, Jean. *"Un code, un droit", in Après le Code de la consommation, grands problèmes choisis*. Paris: Litec, 1995, p. 13.

[4] Propositions pour un nouveau droit de la consommation, Rapport de la Commission Calais-Auloy, La documentation française, 1985.

Historically speaking, the term of "codification" has a specific meaning in French language that takes us back to the very roots of French legal modern history. The codification process, which led to the French Civil Code, is a particular one. Its goal was to unify French law that, at the end of the 18Th century, was predominantly characterised by the chasm between "droit écrit" and "droit coutumier". One may remember the famous words of Voltaire "when you travel in this Kingdom, you change legal systems as often as you change horses".[5] As stressed by Zweigert and Kötz, "the Code was generated by the spirit of the French Revolution, which sought to eradicate the feudal institutions of the past and to implant in their place the natural law values of property, freedom of contract, family, and family inheritance".[6] At that time, the process of codification was seen as a way to create "a legal system of rules which, if given intelligent form according to a plan, can act as the basis for an orderly, reasonable and moral life in society".[7] Talking about codification with regard to French consumer law may therefore not be correct. The process that started in the middle of the eighties during the last century was more a matter of reorganising existing law (what is called "codification à droit constant" in French language) than a real codification.[8] Consumer codes could be presented as "formal codes".

In fact, the legislature did not follow the suggestion of the Calais-Auloy's Committee to reconsider the existing statutes regarding consumer law and to draft new principles in one body of legislation: the Consumer Code.[9] From the very beginning, it was therefore quite evident that the main objective of the Code was to provide a clearer picture of the existing law by creating a unique piece of legislation, where the different acts passed since the beginning of the 1970s would be presented within a specific framework.[10] The vision of "*un code, un droit*" was still far away.

In Luxembourg, the history of consumer codification is quite similar to the French one. Historically, Luxembourg civil law (*droit civil*) is of French origins. The French Civil Code was enacted in France in 1804 and temporarily implemented in Luxembourg in 1814. It was never abandoned though some reforms led to slight differences between the two codes. Therefore, the meaning of codification

5 Œuvres de Voltaire, VII(1838) Dialogues, p. 5.

6 Zweigert, Konrad; Kötz, Hein. *An introduction to Comparative Law*. 3rd edition. translated by T. Weir. Oxford: Clarendon Press, 2011, p. 74.

7 Konrad Zweigert; Hein Körtz. An introduction to Comparative Law, cit., p. 88.

8 This process is quite common in France as shown by a quick look at the official website on French legislation and judicial decisions www. legifrance.gouv.fr where 68 codes can be found.

9 Propositions pour un nouveau droit de la consommation, Rapport de la Commission Calais-Auloy, La documentation française, 1985.

10 As explained by J. Calais-Auloy, in "Un code, un droit", *op. cit.*

in Luxembourg is the same as in France and the developments of Luxembourg civil law are similar to those in France. When it came to codifying consumer law, French law was of course of great inspiration. Bearing in mind the French but also the Italian model, the government opted for consumer law codification in order to present more clearly consumer legislation and to give it more visibility and thus more accessibility.[11] If this last reason was not invoked as such by the French draftsmen of the Consumer Code, the objective to reach a clearer presentation of consumer law, which was one of the founding reasons for codifying consumer law, certainly implied such an approach.

One more reason supporting the codification process and invoked by the Luxembourg legislature was to improve consumers' confidence in the market. This is very clearly expressed in the draft proposal of the Code[12] and certainly stems from the *leitmotif* of the European legislature, always invoking this argument when it comes about adopting a new regulation regarding consumers.[13] Such reason cannot be found in the preparatory works of the French Consumer Code. But the Code was promulgated in 1993, at a time where the awareness of European consumer legislation influence on domestic law was not as developed as it is today. The latest developments of French consumer law, reformed in a consequent manner over these past few years,[14] demonstrate that such a motivation is now inherent to any act passed in that field.[15] These reforms also pointed out the lack of coherency of the French Code. The Code was undermined by a "stratification process" due to the integration of many new legal provisions into it over the years that rendered it unreadable. Reorganising the "reorganised law" became a necessity. Clarity, visibility and accessibility were the main concerns of the French and Luxembourg legislatures when the process of codifying consumer law was undertaken. It is therefore somehow surprising that the content of the codes is different.[16]

[11] *Ibid*. Accessibility must of course be understood not only as to accessibility to consumers but also to businesses and legal actors.

[12] *Projet de loi portant introduction d'un Code de la consommation*, nº 5881, p. 54 et 55.

[13] See E. Poillot, *"Le code luxembourgeois de la consommation : étude de droit interne et compare"*. Journal des Tribunaux. Luxembourg, nº. 1, p. 1-7, janvier 2013.

[14] Several laws were passed, among which two that were crucial for the substance and the form of the Consumer Code, the loi no 2014-344 du 17 mars 2014 relative à la consommation and later the act that re-organised the presentation of the code the Ordonnance nº 2016-301 du 14 mars 2016 relative à la partie législative du code de la consommation.

[15] See *inter alia*, H. Aubry, E. Poillot, N. Sauphanot-Brouillaud, Panorama de droit de la consommation, *D.* 2014, p. 1297 and D. 2017, pp. 539 – 549.

[16] The same can be said about the content of the Italian code, see E. Poillot, "Le code luxembourgeois de la consommation: étude de droit interne et comparé", *op. cit*.

2.2 Common motivations leading to different contents

With these common motivations for codifying, how how would one explain the codes difference of content? Before attempting to answer this question, a short description of the content of the two codes must be undertaken. Briefly stated, indebtedness of consumers is in the French Code but not in the Luxembourg one.[17] On the contrary, travels package regulation is in the Luxembourg Consumer Code but not in the French one.[18] In Luxembourg some provisions such as those regarding products safety mainly related to consumer protection – but not solely –[19] are absent of the Code.[20] On the other hand, in the French Consumer Code, one will find provisions regarding securities that could perfectly apply to a business-to-business relationship.[21]

Dissimilarity of content demonstrates the difficulty to give a comprehensive definition of consumer law, a discipline that emerged as such at the end of the 1970s.[22] In fact, "the mixture of rationales and methods for intervention in consumer transactions today embraces [...] a range of (in places) conflicting aims".[23] As pointed out, rather than defining consumer law,

> the best that can be done is to identify the several trends that comprise modern consumer protection law: trends such as identification of market failure and of, distinctively, a mistrust of the fairness of the market mechanism; also trends that embrace the fortification of consumer rights in private law and that move beyond the private law into the sphere of creating regulatory regimes directed at controlling practices likely to damage the consumer interest.[24]

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17 The regulation on overindebtness is a statute that is standing alone: *Loi du 8 janvier 2013 concernant le surendettement*.

18 The provisions related to this type of contracts are in the "code du tourisme" (Tourism Code) as stated by art. L.224-104 of the French Consumer Code.

19 Products safety regulations have a broader scope of application than the sole relationship between consumers and businesses. A business buying a product is also protected by the safety requirements of these regulations. However, as it is clearly expressed by the recitals of directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, "In order to ensure a high level of consumer protection, the Community must contribute to protecting the health and safety of consumers" (recital 4) and "It is therefore necessary to establish at Community level a general safety requirement for any product placed on the market, or otherwise supplied or made available to consumers, intended for consumers, or likely to be used by consumers under reasonably foreseeable conditions even if not intended for them" (recital 5).

20 They are to be found in the Loi du 31 juillet 2006 relative à la sécurité générale des produits.

21 Artt. L.331-1 to L.333-2 of the French Consumer Code.

22 For a comparative overview of the emergence of consumer protection as a branch of law in Europe, see E. Poillot, *Droit européen de la consommation et uniformisation du droit des contrats en Europe*, Préf. de P. de Vareilles-Sommières, LGDJ 2006, Biblioth. dr. privé, tome 463, nº 137 and ff.

23 HOWELLS, Geraint; WEATHERILL, Stephen. *Consumer Potection Law*. 2ª ed. Ashgate, 2005, p. 9.

24 *Ibid*.

Which regulations legislatures then want to integrate into Consumer Codes is a matter of policy, sometimes of unaware choices[25] and sometimes of founding a place for some provisions that are related to consumer protection but not solely.[26] In the end, codification of consumer law is a matter of putting together, in one book, isolated pieces, without any willingness to rethink consumer legislation a coherent manner. No code can be said to have a comprehensive approach of consumer law.

Whatever the contents may look like, there is however something that is common to all European Consumer codes: their trans-disciplinary nature. All Consumer codes contain provisions related to public law – specific committees dealing with consumer law issues –,[27] to civil law – *i. e*. unfair terms, conformity in sales contract –,[28] to civil procedure – *i. e* injunctions,[29] *ex officio* power of judges, courts competences –,[30] criminal law – criminal sanctions for infringement of certain provisions of the Code.[31]

Therefore, Consumer codes may not be described as a means for the re-codification of civil law ("*droit civil*")? If one talks about a formal process, an isolation from the civil codes of provisions that are of civil law nature but have a specific goal – this of counteracting inequalities of bargaining power in business to consumer contracts – then it is certainly the case. But if one wants to present Consumer codes as a new approach of civil law, then the answer is no. On the contrary, Consumer codes demonstrate, in my opinion, that the provisions they contain must be seen as part of a new branch of law of trans-disciplinary nature. Defining consumer law is not easy, though codification helps.

[25] There is no official explanation why the Luxembourg Consumer Code does not contain the regulations on products safety or consumers on overindebtness. When asked the Member of Parliament who were in charge of the codification process just answered they did not think about it...

[26] That was notably the case of artt. L.331-1 to L.333-2 on securities of the French Consumer Code. With regard to the Italian Code, the decision to integrate into it the legislation regarding product liability can certainly be explained by such a choice.

[27] The Commission de surendettement des particuliers in the French Consumer Code (art. R.712-1 à R.712-20), the Conseil de la consummation in the Luxembourg Consumer Code, (art. L. 312-1).

[28] Art. L. 212-1 and ff. for unfair terms and artt. L. 217-1 and ff. for conformity in sales contract in the French Consumer Code; art. L. 211-2 and ff. for unfair terms; L. 212-1 and ff. for conformity in sales contract in the Luxembourg Consumer Code.

[29] Artt. L. 621-7 and L. 621-8 of the French Consumer Code and artt. L. 320-1 to L. 320-7 of the Luxembourg Consumer Code.

[30] Art. R. 632-1 of the French Consumer Code for the *ex officio* power of the judge and artt. L. 320-1 to L. 320-7 for Courts competences in the Luxembourg Consumer Code.

[31] For example art. L. 122-8 for criminal sanctions applying to unfair commercial practices in the Luxembourg Consumer Code; artt. L. 132-1 and ff. for the same topic in the French Consumer Code.

3 Consequences of Consumer Law Codification

Consumers codes isolate specific provisions, which can be considered of civil law nature, as they rely on legal mechanisms belonging to this branch of law and incorporate them in a specific code. They are therefore rather *de-codifying* civil law than *re-codifying* it. This "de-codification / re-codification" process, which seemed at first sight to be a mere reorganisation process provoked with years an evolution of the meaning and nature of consumer law. It led to a true codification of consumer law.

3.1 De-codification of Civil Law (but not only)

Re-codified civil law is no longer civil law. In their search for a comprehensive approach of consumer protection rights, the draftsmen of the Consumer codes took another perspective. The nature of provisions integrated into Consumer codes was not relevant. On the contrary codification objectives– visibility and accessibility of those specific provisions dealing with consumer protection – were of main concern. In the minds of the draftsmen, these objectives could only be achieved through one means: a code. Yet, a code also meant a branch of law. This was very clear in Calais Auloy's vision of codification "*Un code, un droit*". Consumer law codification can be described as an autonomist approach of consumer law (as opposed to the integrationist approach that took place in Germany where part of consumer law, that dealing with contracts, was integrated into the *BGB*). Rules from different nature were codified because they were specific, whatever their nature may be: civil law, criminal law, civil procedure. Once re-codified, these rules, which already proved to be specific by nature, were transformed. It has been shown in France that consumer law – the demonstration relies on the provisions of the French Consumer Code – has an influence on the legal system. In her book, Natacha Sauphanor-Brouillaud explains that consumer law transcends the distinction existing between public and private law,[32] alters the role of criminal law and strengthens the power of judges within the legal system. This strong influence is due to the fact that once re-codified, rules regarding consumer protection, wherever they come from, acquire a new nature: they are no longer civil law rules, nor criminal law rules, nor procedural law rules any more. They become "consumer law rules", derogating to those codified in the civil, criminal or procedural codes. They operate a process

[32] SAUPNHANOR-BROUILLAUD, Natacha. *L'influence du droit de la consommation sur le système juridique*, Préf. J. Ghestin, LGDJ 2000, biblioth. dr. pr., tome 326.

of de-codification of their original codes, which lose their capacity to embrace civil, criminal or procedural provisions as a whole. For example, the rules on the formation of contracts between consumer and businesses are of civil law nature/origins. But their reshaping to the context of a weaker party protection results in a clear derogation to civil law principles such as this of freedom of contract or "*pacta sunt servanda*", if one thinks about the contractual formalism imposed to business-to-consumer relationships or about the withdrawal right granted to consumers.[33]

The same phenomenon can be observed with regard to procedural rules, which are tailored to serve the purpose of protecting a weaker party when they are integrated into Consumer codes[34] Criminal rules are used to serve the purpose of efficiency and effectiveness of consumer protection considered as public interest, which sometime leads to distortions of fundamental principles such as the existence of the elements constituting an offence.[35] All of these alterations of well-established principles are justified by the specific context of business-to-consumer relationships. Had these rules been codified in the existing codes, they would still be considered as civil, procedural, criminal rules. But once integrated to Consumer codes their nature changes. They are not only considered as derogating provisions anymore but as general rules applying to consumers dealing with businesses that are part of a coherent system of protection of the weaker party. To some extent, this changing of nature dissuaded the German legislature from codifying consumer law. Having consumer law existing as such was seen as a risk of fragmentation of civil law (*Zivilrecht*). Keeping consumers contractual provisions within the field of civil law was a mean not to loose the unity of this discipline.

To the contrary, French legislature, under the influence of a powerful lobbying of economic actors, took the view that because a Consumer Code existed, any legislation presented as consumer protection oriented and therefore of "consumer protection nature" should not be implemented in the Civil Code in order to maintain the coherency of the legal system. This clearly resulted from the debate on the transposition of Directive 99/44/EC on certain aspects of the sale of consumer

[33] Artt. L. 221-18 to L. 221-28 of the French; article Artt. L. 222-9 to L. 222-10 of the Luxembourg Consumer Code.

[34] There is for instance a faculty for judges to raise *ex officio* provisions of the French Consumer Code, which becomes an obligation when it comes about applying provisions on unfair terms art. R. 632-1 and a specific competence rule providing that the competent jurisdictions for cases brought against consumers is the court of the district in which the consumer is domiciled, art. R. 631-3 of the French Consumer Code.

[35] For example the sanction regarding the infringement of a prescription of civil nature, such as the duty to inform consumers on the existence of a special regulation regarding conformity will be applied though there is no intentional offence of such a prescription, which is highly derogatory to fundamental principles of criminal law. See article art. L. 217-15 of the French Consumer Code, article L. 217-15 of the Luxembourg Consumer Code.

goods and associated guarantees. The proposal made by the Viney Committee to implement the directive in the Civil Code was rejected on several grounds among which, particularly convincing in the eyes of the legislature, was that the Consumer Code was the "logical place" to transpose its provisions.[36]

Changing the nature of the rules integrated in Consumer codes does however not mean that once transformed, these rules may not have a feed-back effect on the disciplines from which they originate. This is particularly true with regard to civil law rules. Provisions dealing with contractual rights are still considered as part of the law of contract, an academic discipline in itself[37] and a field of research and of European proposals.[38] A good example of this feed-back effect can be found in French law where consumer contract law did influence the recent reform of contract law. The French Civil Code now contains a provision (article 1171[39] resulting from the recent reform of contract law)[40] that prohibits unfair terms in standard contracts ("*contrats d'adhésion*") following the model of article L 212-1 of the Consumer Code.[41] Such a process could certainly be reproduced by the Luxembourg legislature given its tendency to follow the French model. But if a feed-back effect can exist, there is however now a clear distinction operated between contractual consumer law and civil law. To become civil law, these provisions have to be reshaped and then inserted into the Civil Code.

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[36] "Le Code de la consommation apparaît comme le réceptacle naturel de tous les textes organisant la protection particulière des consommateurs", PAISANT, G. et LEVENEUR, L., "*Quelle transposition pour la directive du 25 mai 1999 sur les garanties dans la vente de biens de consommation ?*" *JCP* 2002 I 135, spec. nº 9. On the animated debate surrounding the dicussion on how to implement this directive in the French legal order see POILLOR, E., *Droit européen de la consommation et uniformisation du droit des contrats en Europe*, *op. cit.*, nº 843 to 869.

[37] It suffices to think about the numerous textbooks, manuals and academic researches dedicated to the law of contract.

[38] Among which those of the European Commission that dedicated several green papers and proposals see *inter alia* the *Green Paper from the Commission on policy options for progress towards a European Contract Law for consumers and businesses*, COM(2010)348 final.

[39] Article 1171 provides "Dans un contrat d'adhésion, toute clause qui crée un déséquilibre significatif entre les droits et obligations des parties au contrat est réputée non écrite. L'appréciation du déséquilibre significatif ne porte ni sur l'objet principal du contrat ni sur l'adéquation du prix à la prestation".

[40] Ordonnance nº 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la preuve des obligations.

[41] Article L 212-1 provides: "Dans les contrats conclus entre professionnels et consommateurs, sont abusives les clauses qui ont pour objet ou pour effet de créer, au détriment du consommateur, un déséquilibre significatif entre les droits et obligations des parties au contrat. Sans préjudice des règles d'interprétation prévues aux articles 1188, 1189, 1191 et 1192 du code civil, le caractère abusif d'une clause s'apprécie en se référant, au moment de la conclusion du contrat, à toutes les circonstances qui entourent sa conclusion, de même qu'à toutes les autres clauses du contrat. Il s'apprécie également au regard de celles contenues dans un autre contrat lorsque les deux contrats sont juridiquement liés dans leur conclusion ou leur exécution. L'appréciation du caractère abusif des clauses au sens du premier alinéa ne porte ni sur la définition de l'objet principal du contrat ni sur l'adéquation du prix ou de la rémunération au bien vendu ou au service offert pour autant que les clauses soient rédigées de façon claire et comprehensible [...]".

The changing of rules nature can be seen as an important consequence of codification of consumer protection provisions. A further step, always in line with this shifting effect, is the changing of nature of Consumer codes. "Formal codes" are on their way to becoming "real codes".

3.2 Towards a True Codification of Consumer Law?

When one looks at the two codes today, the wish expressed by Prof. Calais-Auloy of "*Un code, un droit*" might have been realised. The content of the codes covers what is usually considered as consumer law in the two countries. The difference of content is not an obstacle to this statement since, as stressed previously, the legal orders do not have the same approach of the content of consumer law itself.

The existence of a code leads to the acknowledgement of a new branch of law. Once consumer law is considered as a separate branch, one can notice the faster development of rules regarding it. Such an occurrence is particularly obvious in French law. The same phenomenon can however already be noticed in Luxembourg law. Consumer codes are no longer "formal codes", but "real codes".

In Luxembourg, the implementation of the 2005/29 directive on unfair commercial practices, which happened shortly before the promulgation of the Consumer Code, demonstrates that to some extent this is already the case, though it is not as obvious as it is in the French legal system. The act implementing the directive anticipated the code promulgation as the code was ready but could not be adopted immediately. At that time, the Grand Duchy was under the threat of an infringement proceeding from the Commission for a late transposition of the directive. The choice was made to sanction an unfair commercial practice, which led to a contractual relationship, by the nullity of the contract.[42] This is a new type of nullity specific to consumer law, which was later incorporated into the Code. The Code also contains a general "obligation of information".[43]

In France, this transformation is particularly clear when one considers the new provisions adopted during the last years in the field of procedural law. They are spread throughout the code, some, like these on the short prescription for legal actions directed at consumers, is found in the chapter regarding the formation and the execution of contracts.[44] Some, such as those organising the collective

[42] Art. L.-122-8 (2) of the Luxembourg Consumer Code.
[43] Art. L. 111-1 of the Luxembourg Consumer Code.
[44] Livre II Formation et execution du contrat. Art. L. 218-1 to L. 218-2 of the French Consumer Code.

redresses, are located in the chapter on dispute resolution[45] or those dealing with the *ex officio* power of the judge concerning any provisions of the Consumer Code.[46] This last aspect of procedural consumer law was greatly impacted by the jurisprudence of the Court of Justice of the European Union. However, an in depth study of the legislative process shows that in France at least, the will to promote consumer legislation effectiveness through this mean existed before the Court of Justice handed down its first decision on this issue.[47] The jurisprudence of the Court certainly shaped the content of the provisions regarding the *ex officio* power, but its insertion in the Consumer Code is first the result of the need to develop further an existing branch of law, which was made visible and accessible by the Code. The *ex officio* power of the judge in consumer law is the symbol of the acknowledgement of consumer law as branch of law that deserves a specific approach. What would mean an accessible body of rules, if it were not effective?

Codification of consumer law eventually came full circle: from a formal code to a true one, unifying consumer law as the Civil Code unified French law in the 19th century. And in fact, once unified, consumer law can be seen as a branch of law, a *corpus* that requires further developments. Consumer protection is no more a secondary legislation. Whether codes are necessary to achieve this result is another story. I leave that question to those, who unlike me live and teach in countries where Consumer codes do not exist, to decide.

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[45] Chapter 5 (Livre V).
[46] Art. R. 632-1 of the French Consumer Code.
[47] See E. Poillot, in N. Sauphanor-Brouillaud, E. Poillot, C. Aubert de Vincelles, G. Brunaux, *Traité de Droit Civil, Les contrats de consommation. Règles communes*, LGDJ 2012, spéc. nº 963.