The movement towards the harmonisation of consumer protection in Europe, which started during the nineteen eighties, has come a long way. The activity of the European Union has been essential in that respect. The high level of rapprochement of the laws of member states that has been reached was unthinkable only two decades ago.

The technique used by the European Union to achieve this harmonisation has always been the same. It is by enacting directives that the laws of member states have been harmonised in this area. Many directives have been enacted so far. Among others, three directives played a prominent role. Without being exhaustive, it is necessary to mention, first of all, the directive on unfair terms in consumer contracts,\(^1\) secondly the directive on protection of consumers in respect of distance contracts,\(^2\) and finally the recent directive on certain aspects of the sale of consumer goods and associated guarantees.\(^3\) It is noticeable that these directives do not follow the same approach of harmonisation: the former two follow a horizontal approach, i.e. regulating a specific situation despite the contract in question, and the latter follows a vertical approach, i.e. only regulating a specific contract. This difference of approach can lead to overlaps where the provisions of two directives pretend to regulate the same situation:

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\(^1\) Dir. 93/13/ECC of 5 April 1993, OJEC nr. L. 95/29 of 21 April 1993.
\(^2\) Dir. 97/7/ECC of 20 May 1997, OJEC nr. L. 144/19 of 4 June 1997. See also Dir. 02/65/ECC of the 23 September 2002 concerning the distance marketing of consumer financial services, OJEC nr. L. 271, 9 October 2002, p. 16-24.
\(^3\) Dir. 99/44/ECC of 25 May 1999, OJEC nr. L. 171/12 of 7 July 1999.
since their cumulative application is impossible, it is necessary to choose the one to be applied.

For example in some situations the doorstep-selling Directive (85/577/EC) and the time-share Directive (94/47/EC) can be applicable at the same time. Both provide a *jus poenitendi* in favour of the consumer, but the lengths of the periods during which the consumer can withdraw from the contract are different: how to solve this conflict? The European Court of Justice stated that although time-share contracts are included in the provisions of Directive 94/47/EC, this does not exclude that a contract which contains an element of time-sharing, may at the same time pertain to the range of application of Directive 85/577/EEC, where the premises for the application in this last case are satisfied. In truth, neither of the two directives contains provisions intended to rule out the application of the other. Protection is built into Directive 85/577/EC and an interpretation in which this protection is excluded is in sharp contrast with its aims, for the simple reason that the contract is generally included in the range of application of Directive 94/47/EC. The result of this interpretation would deprive the consumer of the possibility to avail of the protective provisions of Directive 85/577/EC, even if the contract had been negotiated away from business premises.4 To solve this conflict the European Court of justice rules in favour of the application of the law that provides more protection for the consumer.5

1 Harmonisation and Private International Law

Harmonisation of a field of the law leads generally to the extinction of private international law issues. Since the content of the laws of the member states are equal, there is no interest to solve a conflict of laws and courts can either apply their national law or a foreign law. This is generally the solution held by case law in several European countries and is generally addressed to as the principle of equivalence.6 Moreover, English courts are used to consider that foreign law is presumed to be the same as English law.7 The important harmonisation of the

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5 In this case, the law that provides the longest time limit for withdrawal from the contract.


7 See for example Dynamit A.G. v. Rio Tinto Co. [1918] A.C. 260, at 295; Casey v. Casey [1949] P. 420, at 430. For the explanation of this solution, see DICEY, MORRIS, COLLINS