

Basedow on the Optional Instrument of European Contract Law

Jürgen Basedow, Director of the Max-Planck-Institute for Comparative and International Private Law Hamburg, has posted “The Optional Instrument of European Contract Law: Opting-in through Standard Terms – A reply to Simon Whittaker” on SSRN. The paper can be downloaded [here](#). The abstract reads as follows:

In a paper recently published (The Optional Instrument of European Contract Law and Freedom of Contract, ERCL 7 (2011) 371 – 388 at p. 388), Simon Whittaker has criticized the “reduction of an individual consumer’s protection” resulting from the adoption of an optional instrument on European contract law such as the one now contemplated by the European Commission (the “Optional Instrument”). The article contains a number of propositions which will not be tackled here. This comment is confined to consumer contracts and to a pertinent key assumption of Whittaker: that a standard term exercising the option in favour of the Optional Instrument would be subject to judicial review under Directive 93/13 on unfair contract terms in consumer contracts.