

Comparative Judicial Governance and Contractual Liability in EU Law

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In the EU contractual liability is regulated not only by national legal systems but also by EU norms. Moreover, both national courts and the Court of Justice of the EU are involved in determining questions of contractual liability by regulating the content of private contracts. The paper will set out the structure of regulating contractual content in the EU and discuss the points of intersection among different modes of contractual governance: EU rules, national rules, private regulation and the freedom of contractual parties. The paper will focus on judicial governance modes in the context of contractual liability and make comparisons between national and the EU's judicial governance structures in contract law. Against this background the paper will explain the differences between national courts and the Court of Justice in the way they interact with contractual liability questions. The paper will use the concept of 'judicial intervention' to investigate what values the Court's review of contractual content is promoting and what theories explain the approach adopted by the EU's judicial institution in individual cases. The paper will discuss how the EU judicial governance of contractual relationships could be improved by broadening the range of considerations which the Court of Justice takes into account when deciding on whether and how to review the content of contractual transactions.