

Drafting the European Sales Law

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Globalization of the Contract Law

- Ernst Rabel (1874 – 1955): *Das Recht des Warenkaufs. Eine rechtsvergleichende Darstellung*, 2. Volumes., Tübingen/Berlin 1936 and 1957
- Hague Sales Conventions 1964 and its misfortune
- CISG – The Vienna Convention on the International Sales of Goods and its success
- UNIDROIT: International Institute For The Unification Of Private Law
- UNIDROIT Principles on International Commercial Contracts (1992, 2004, 2010)



Principles of the European Contract Law



- The academic world and the Europeanization of the Private Law
- The Commission for the European Contract Law – The „Lando Commission”
- The working method of the Lando Commission. The PECL as Restatement of the European Contract Law?
- The relevance of the PECL for the further process of the Europeanization of the contract law

Principles of the European Contract Law



Study Group on European Civil Code

- The idea of the development of the PECL
- Covering other areas of the private law:
 - Specific Contracts
 - Benevolent intervention in another's affairs
 - Non-contractual liability arising out of damage caused to another
 - Unjustified enrichment
 - Acquisition and loss of ownership of goods
 - Proprietary security rights in movable assets
 - Trusts

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Principles of the Existing EC-Contract Law (Acquis Principles)

- The Idea of the Restatement of the Private Law of the European Union
- The question of the feasibility of the narrow sectorial rules of the existing *acquis communautaire* for the generalization
- Searching the new structure for the *acquis communautaire* – the idea of the „mirror structure“

Principles of the Existing EC-Contract Law (Acquis Principles)



Draft Common Frame of Reference

- Connecting the *acquis communautaire* and the *acquis commun*
- The so called „academic Draft Common Frame of Reference” – finding a common platform between the Principles of European Law, provides by the Study Group and the Acquis Principles of the Acquis Group
- The idea of the „political” Common Frame of Reference and its relation to the „academic” DCFR



Alternatives to the Draft Common Frame od Reference

- Code Européen des Contrats – Avant-projet:
European Code of Contracts – A Pre-draft of the
ACCADEMIA DEI GIUSPRIVATISTI EUROPEI – so
called Gandolfi's Draft
- **Projet de Cadre Commun de Référence of the
Association Henri Capitant des Amis de la
Culture Juridique Française and Société de
Législation Comparée:**
 - **Principes contractuels communs**
 - **Terminologie contractuelle commune**



Towards a European Civil Code

- The Question of the European Civil Code – between the Euphoria and the Condemnation
- Towards a European Civil Code – a fundamental analysis on the possibilities and frames of the idea of the European codification
- The fears against the idea of the European Civil Code: *Pierre Legrand* – a diabolical idea

Towards a European Civil Code



Political development

- **Communication of the Commission, June 2001:**
- IV Options:
 1. The problems of the EU Law should be solved by the free market itself. Nothing special needs to be undertaken
 2. The works on the non – binding principles on contract law needs to be supported, which should help the national legislators, national courts and the arbitration
 3. The review of the existing *acquis communautaire*
 4. The elaboration of the new instruments like regulations, directives or recommendations – the idea of the optional instrument or even partial codifications

Political development

- The Action Plan for the more coherent Contract Law (2003).
- The Formulation of the idea of the Common Frame of Reference
- The Green Book of the Commission on the consumer law 2007 – the raise of the idea of the so called „framework directive”

Political development

- The new Directive on consumer rights
- Backgrounds: an idea of the framework directive and its result
- The new directive: between compilation and innovation
- Question of the full harmonization

Political development

- The „blue button” idea of Hans Schulte-Nölke
 - The Green book on the European Contract Law COM (2010) 348 –
 - Com (2010) 348 – the Options for the Contract Law for the Consumer and Businesses
1. Publication of the Results of the Work of the Group of Experts appointed by the Commission
 2. The official „toolbox” for the Legislator
 3. Recommendation for the European Contract Law
 4. Regulation of the optional European Instrument for the Contract Law
 5. Directive on European Contract Law
 6. Regulation on European Contract Law
 7. Regulation on European Civil Code



Political development

- Proposal for the Common European Sales Law
- Structure of the CESL:
 1. Regulation
 2. Annex – Common European Sales Law
 3. Annex – Instruction for the Consumers

Structure of the CESL

- Annex I contains the text of the Common European Sales Law.

Part I 'Introductory provisions' sets out the general principles of contract law which all parties need to observe in their dealings, such as good faith and fair dealing. The principle of freedom of contract also assures parties that, unless rules are explicitly designated as mandatory, for example rules of consumer protection, they can deviate from the rules of the Common European Sales Law.

Structure of the CESL

Part II 'Making a binding contract' contains provisions on the parties' right to receive essential pre-contractual information and rules on how agreements are concluded between two parties. This part also contains specific provisions which give consumers a right to withdraw from distance and off-premises contracts. Finally it includes provisions on avoidance of contracts resulting from mistake, fraud, threat or unfair exploitation.

Structure of the CESL

Part III 'Assessing what is in the contract' makes general provisions for how contract terms need to be interpreted in case of doubt. It also contains rules on the content and effects of contracts as well as which contract terms may be unfair and are therefore invalid.

Structure of the CESL

Part IV 'Obligations and remedies of the parties to a sales contract' looks closely at the rules specific to sales contracts and contracts for the supply of digital content which contain the obligations of the seller and of the buyer. This part also contains rules on the remedies for non-performance of buyers and sellers.

Structure of the CESL

Part V 'Obligations and remedies of the parties to a related services contract' concerns cases where a seller provides, in close connection to a contract of sale of goods or supply of digital content, certain services such as installation, repair or maintenance. This part explains what specific rules apply in such a situation, in particular what the parties' rights and obligations under such contracts are.

Structure of the CESL

Part VI 'Damages and interest' contains supplementary common rules on damages for loss and on interest to be paid for late payment.

Structure of the CESL

Part VII 'Restitution' explains the rules which apply on what must be returned when a contract is avoided or terminated.

Structure of the CESL

Part VIII 'Prescription' regulates the effects of the lapse of time on the exercise of rights under a contract.

Problem with the CESL – a missing competence of the EU

JUDGMENT OF THE COURT (Grand Chamber)
2 May 2006 ([*](#)) In Case C-436/03,

Judgment

1 The European Parliament seeks annulment of Council Regulation (EC) No 1435/2003
begin_of_the_skype_highlighting 1435/2003
end_of_the_skype_highlighting of 22 July 2003
on the Statute for a European Cooperative
Society (SCE) (OJ 2003 L 207, p. 1

Problem with the CESL

Article 3

Optional nature of the Common European Sales Law

The parties may agree that the Common European Sales Law governs their cross-border contracts for the sale of goods, for the supply of digital content and for the provision of related services within the territorial, material and personal scope as set out in Articles 4 to 7.