

Schulze / Zoll

European Contract Law

C.H.BECK · Hart · Nomos

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by

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Foreword

Contract law is at the centre of the development of European private law. Thirty years of European directives and CJEU jurisprudence have contributed to the growth of an extensive *acquis communautaire* with its innovative approaches and increasing influence on the laws of the Member States. Furthermore, drafts such as the Principles of European Contract Law and legislative projects such as the European Commission's Proposal for a Common European Sales Law have also contributed to the conceptual development and structure of this new area of law. The development of European contract law requires contributions from jurists across Europe, therefore this volume intends to allow practitioners, students and scholars to participate in an ever growing, dynamic and highly interesting area of modern law. In order to do so the volume provides fundamental information about the content, methods and objectives of European legislation in the field of contract law and explains the interaction between the legislator, judges and academics during the creation of European contract law. It particularly attempts to show European contract law's characteristics as supranational law as well as the innovative features vis-à-vis traditional concepts in contract law. Above all, the volume strives to guide jurists along an often unfamiliar path and to promote an understanding of the characteristics of a new legal development.

The focus on the features of this development as well as the resulting structures is all the more important as this volume has been published at a time of great uncertainty regarding the next legislative steps in European private law. The European Commission has announced that it will retract its Proposal for a Common European Sales Law and will instead take other measures; though as yet no light has been cast on the form or scope of these measures. It is however likely that future legislation will relate to issues on online trading and 'digital contracts'. These recent developments may cause the reader to ask whether the Common European Sales Law's key role in this volume on European contract law is now superfluous. However, this concern is unfounded as the volume was not conceived with the intention to illustrate the individual doctrinal features of European private law but rather to depict how the legal system is developing and the important contributions made by the various different legal sources. The emerging *acquis communautaire* is involved in a tense relationship with the laws of the Member States, the EU legislator, the EU courts as well as academic drafts – above all in the form of comprehensive proposals aiming at greater coherency in European contract law. The Common European Sales Law indeed reflected a new stage in the development of a European contract law, though similar comments also apply to proposals such as the Draft Common Frame of Reference, the 'Acquis Principles' and many others.

The volume attempts to show how a system arises from the dialogue between the different sources; in this respect it is not limited to current legislation. It

adopts a method employed by the ‘Acquis Group’ which seeks to use fragmented European sources in order to create a system. The system is vastly different from the legal systems of the Member States which, however, also influence the development of a system of common European law. It will be seen from this volume that the development has certainly been dynamic, yet its path has taken many twists and turns. The Common European Sales Law will not vanish without a trace as it will have long-term influence on the features of the European legal landscape and will serve as a ‘reference’ for the future development of European private law.

The volume is based on the many discussions between the authors and their work together on a number of research projects. Its content and structure are based on the German edition (Nomos, April 2015) though with several additions (in particular on interpretation, change of circumstances, and an ‘outlook’) and updates. The Chapters 1, 3 I and IV, 5, 6 I and IV, 8 were written by Reiner Schulze and Chapters 2, 3 II and III, 4, 6 II and III, 7 by Fryderyk Zoll. These latter chapters formed part of the project ‘Made in Europe – European Legal Standards of Quality of Services Performed under the Competitive Conditions of the Global Market. The Model Solutions for Law of Obligations Oriented on Services’. The project was funded by the Narodowe Centrum Nauki (National Science Centre) under the decision no. DEC-2012/04/A/HS5/00709.

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September 2015

*Reiner Schulze
Fryderyk Zoll*

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Abbreviations

ABGB	Allgemeines bürgerliches Gesetzbuch; Austrian Civil Code
AcP	Archiv für die civilistische Praxis
ACQP	Principles of the Existing EC Contract Law (Acquis Principles)
ADR	Alternative Dispute Resolution
ADR Directive	Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes
AGB	Allgemeine Geschäftsbedingungen; general terms and conditions
Art(s)	Articles(s)
Bd.	Band; volume
BGB	Bürgerliches Gesetzbuch; German Civil Code
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen; Decisions of the German Federal Court of Justice (Civil Law)
BT-Drucks.	Bundestagsdrucksache; Bundestag document
BW	Burgerlijk Wetboek; Dutch Civil Code
CESL	Common European Sales Law
CESL-D	Common European Sales Law (Draft Annex I)
CESL-Reg-D	Common European Sales Law (Draft Regulation)
CISG	United Nations Convention on Contracts for the International Sale of Goods
CJEU	Court of Justice of the European Union
CMLR	Common Market Law Review
Code Civil	French Civil Code
Codice Civile	Italian Civil Code
Commercial Agents Directive	Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents
Consumer Credit Directive	Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers
Consumer ODR Regulation	Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes
CoPECL	Common Principles of European Contract Law
Consumer Rights Directive	Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights
Consumer Sales Directive	Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees
Cultural Objects Directive	Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State
CUP	Cambridge University Press

Abbreviations

DCFR	Draft Common Frame of Reference
Distance Marketing of Financial Services Directive	Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services
DNotZ	Deutsche Notar-Zeitschrift
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
E-Commerce Directive	Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market
ECR	European Court Reports
ECTHR	European Court of Human Rights
Ed(s)	Editor(s)
Edn	Edition
EEC	European Economic Community
E.g.	Exempli gratia; for example
EGBGB	Einführungsgesetz zum Bürgerlichen Gesetzbuche; Introductory Act to the German Civil Code
Employment Equality Directive	Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
EP	European Parliament
ERCL	European Review of Contract Law
ERPL	European Review of Private Law
E-Signature Directive	Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures
Etc.	Et cetera; and the rest
Et seq.	Et sequential; and the following
EU	European Union
EUI	European University Institute
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
EWS	Europäisches Wirtschafts- und Steuerrecht
Gender Directive	Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services
GPR	European Union Private Law Review
HK-BGB	Bürgerliches Gesetzbuch – Handkommentar
HZ	Historische Zeitschrift
i.e.	Id est; that is
INCOTERMS	International Commercial Terms
Insurance Mediation Directive	Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation
JR	Juristische Rundschau

Abbreviations

JZ	JuristenZeitung
Late Payment Directive	Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions
Late Payment Directive 2000	Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions
Life Assurance Directive	Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance
Markets in Financial Instruments Directive	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments
MJ	Maastricht Journal of European and Comparative Law
MLR	Modern Law Review
MMR	Multimedia und Recht
Mortgage Credit Directive	Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property
MüKo	Münchener Kommentar zum Bürgerlichen Gesetzbuch
n	Footnote
No.	Number
NJW	Neue Juristische Wochenschrift
nyr	Not yet reported
ODR	Online Dispute Resolution
OJ	Official Journal of the European Union
OR	Obligationenrecht; Swiss Law of Obligations
OUP	Oxford University Press
Package Travel Directive	Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours
Para(s)	Paragraph(s)
Payment Services Directive	Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market
PECL	Principles of European Contract Law
PEL	Principles of European Law
PICC	Principles for International Commercial Contracts
QB	Queen's Bench Division
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
Racial Equality Directive	Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
Reg	Regulation
RGZ	Decisions of the Reich Court (Civil Law)
RIDC	Revue internationale de droit comparé
Riv.Dir.Civ.	Rivista di Diritto Civile

Abbreviations

Rome I Regulation	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations
RTD Civ.	Revue Trimestrielle de Droit Civil
Schmidt-Kessel CESL	Schmidt-Kessel (ed), Der Entwurf für ein Gemeinsames Europäisches Kaufrecht – Kommentar (Sellier 2014)
Schulze CESL	Schulze (ed), Common European Sales Law – Commentary (Nomos 2012)
SE	Societas Europaea
Services Directive	Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market
SI	Statutory Instrument
SME	Small and medium-sized enterprise
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
Timeshare Directive	Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts
Unfair Commercial Practices Directive	Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market
UN	United Nations
UNIDROIT Principles	UNIDROIT Principles of International Commercial Contracts
UWG	Gesetz gegen den unlauteren Wettbewerb; German Unfair Competition Act
VUWLR	Victoria University of Wellington Law Review
ZEuP	Zeitschrift für Europäisches Privatrecht
ZIP	Zeitschrift für Wirtschaftsrecht
ZJS	Zeitschrift für das Juristische Studium
ZRP	Zeitschrift für Rechtspolitik