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Towards a European Contract Law

Ewoud Hondius
Catedràtic de Dret Civil de la Universitat d'Utrecht,
membre de la Commissió de Dret Contractual Europeu
(Commissió Lando)

1. Introduction

This paper is about the development of a European contract law. In the past decades, EC directives have led to the intro duction of some unified, or at least harmonised, contract law at a European level. A directive on unfair contract terms, which goes to the heart of contract law, has been transposed in most Member States[1]. A directive on distance selling is now in the course of being implemented. And a draft directive on consumer goods and associated warranties is at present in the course of being adopted by the European Council of Ministers. These are but three of the best known objects of EU initiatives in the area of contract law. In the related area of tort, a directive on product liability has now been implemented in all Member States, as well as in some other states[2]. A list of relevant directives is reproduced in the second edition of the book 'Towards a European Civil Code'[3].

The introduction of these directives has not always been uncontroversial. At the time, the constitutionality of the directive on product liability was doubted by some politicians[4]. The Single Act and the Treaties of Maastricht and Amster dam have put an end to such doubts, but Maastricht has introduced a new theme: is civil law not something to be left to Member States under the principle of subsidiarity?[5]

There are other criticisms as well. Not everyone, even when convinced of the constitutionality, is attracted by the quality

of EU directives. The draft directive on liability for services - which was later withdrawn - has been criticised on this count from every side, academics[6], producers and consumers[7]alike. These questions raise the issue whether or not the EU should contemplate the gradual build up of a corpus of civil law. Until recently, the emphasis has rather been on public law, but several of the prerequisites for a European civil law do already exist. The European Court of Justice has shown itself highly competent; it has brought into operation really from scratch a European administrative law, which in turn has influenced the development of national law[8]. And even though the impact of the Court on private law may be small rather than large[9], this may change when more directives dealing with civil law are adopted. There is a European bar. What is lacking is consensus over the direction which this development should take. Should consensus not be arrived at as to the framework in which future directives in the area of civil law should find a place? Such framework might eventually be provided by a European Civil Code.

This issue raises several interesting questions. First, there is the question already referred to above: is there a constitutional basis for a European Civil Code in the Treaty of Rome, as amended by the Treaties of Maastricht and Amsterdam? Secondly, is codification of the law, more specifically of the civil or private law, a worthwhile idea? And finally, is this feasible on a European level, and if so, what should be the contents of such a code? This paper basically aims at answering only the last question: whether the various domestic legal systems in Europe are not too far apart to even contemplate unification or harmonisation, and what direction the provisions should take.

This paper will argue that the various legal systems are indeed too far apart at present to contemplate unification straight away. However, in five or ten years time this may be different. The difficulty seems to be that the systems are apart not only where solutions to common problems are concerned but also as to the formulation of these problems, the concepts used and the various ways of finding the law ('law-making'). Not always is this the case. The Common law jurisdictions, England and Wales, and Ireland, are close. The same applies to the civil law countries France, Belgium and Luxembourg, and to the Nordic states Denmark, Finland, Sweden and the European Economic Space State Norway. As between civil law and common countries[10], England and Scotland are an example of close co-operation. As these examples show[11], a common language or linguistic heritage

in the case of the Nordic countries and a common legal culture often are the basis for such co-operation. It is indeed in this domain that the concept of legal families may still play a role[12]. Another basis for co-operation is the *lex mercatoria*, a set of rules, usages and maxims which has developed in private practice.

A common language Latin and a common heritage Roman law once did of course exist in Europe. Although the present situation bears little resemblance to pre-XIXth century Europe, and therefore a 'return' to that period is highly unlikely, yet the present interest in a new European civil law is a fascinating challenge to legal historians. As a German author, Schulze, has observed:

> 'The present and the past are linked in the concepts of European legal culture and European legal history in two ways: the awakening of interest in research into European legal history is prompted by the experience of the present, namely the present-day efforts towards the development of a body of common European law. The resulting research can in turn influence present-day thinking in that, contrary to another tradition and present-day experience, namely the legal thinking moulded by the nation-state, it contributes from a historical standpoint to a consciousness of a shared European identity. The concept of European legal culture is thus directed at the definition of an identity for the present based on the past whilst research in European legal history is both defined by and directed towards the present'[13] .

Is all this academic speculation, designed at upgrading the profile of the law curriculum? A brief look at what the 'actors of the law' are doing shows us that the interest in the development of a European (civil) law is very real. Attorneys all over Europe have formed alliances. Judges are discussing their European ambitions. The most important event is that future attorneys and judges, the law students of today, are very much affected. Many present day students are participa ting in various exchange programmes, of which SOCRATES (formerly ERASMUS) is the most successful, and a common legal education is being contemplated and in some cases has started in various countries[14].

In an Annex to this paper, some texts from the UNIDROIT Principles for Commercial Contracts and from the Principles of European Contract Law will be set out.

Before embarking upon this exercise, I shall first have to limit the scope of this paper in No 2.

2. Subject-matter of this paper

The subject-matter of this paper is Contract Law. There is little doubt in my mind that a future European Civil Code should also deal with other traditional areas of civil law, such as family law, inheritance law, restitution, property and trust. A future European Civil Code should also encompass what is now dealt with in Europe's Commercial Codes. Did not Euro pe's impact on private law begin with the company law directives? Yet, for practical reasons, this paper will hardly touch upon commercial matters.

3. Constitutionality

Does the European Union have the competence to adopt a European Civil Code? This paper will not provide an in depth analysis of this interesting question. Many protagonists of a European Code point to a resolution of the European Parlia ment. Article 1 of this 'Resolution on action to bring into line the private law of the Member States'[15] reads:

> 'Requests that a start be made on the necessary preparatory work on drawing up a common European Code of Private Law, the Member States being invited, having deliberated the matter, to state whether they wish to be involved in the planned unification'.

4. Codification

Ever since the famous debate between Thibaut and Savigny in early XIXth century Germany, the question has remained on the civil lawyer's agenda: to (re)codify the law or not.

5. Is it feasible?

> 'let contract flowers bloom rather than allow the tort elephant to trample them down'[16] .

6. How to proceed

From the preceding part of this paper the conclusion may be

drawn that a European Civil Code may still be a long way ahead, but that it is not to be excluded altogether. It there fore seems appropriate to contemplate the elaboration of a code or restatement, which may at least provide a framework. Such 'pre-code' may for instance serve to make directives compatible with one another.

7. New problems: finding the law

> A word of caution: we all take it for granted that the law is found or made by the courts. To a growing extent this is no longer the case. Let me give you one example, concerning the presumed English dislike for notions such as that of *good faith*. Teubner, MLR

8. The Netherlands, Belgium and Germany

9. Common and civil law

10. East and West

(a) European community law

(b) The constitutional argument

(c) The use of comparative law by courts

10. Conclusion

The impact of European law on the development of private law will become more and more important in the imminent future. A number of directives does already force Member States to harmonise part of their contract and tort law. Other areas of private law will soon also be the object of harmonising efforts. Not always will the European Community use directives as its sole instrument. Other instruments propagated include treaties and regulations. Private self-regulation is another source.

MATERIALS

Préambule Unidroit

Unidroit Préambule

> Les Principes qui suivent énoncent des règles générales propres à régir les contrats du

commerce international.

Ils s'appliquent lorsque les parties acceptent d'y soumettre leur contrat.

Ils peuvent s'appliquer lorsque les parties acceptent que leur contrat soit régi par les "Principes généraux du droit", la "lex mercatoria" ou autre formule similaire.

Ils peuvent apporter une solution lorsqu'il est impossible d'établir la règle pertinente de la loi applicable.

Ils peuvent être utilisés afin d'interpréter ou de compléter d'autres instruments du droit international uniforme.

Ils peuvent servir de modèle aux législateurs nationaux et internationaux.

Principes européens art. 1.101: Application des Principes

1 Les présents Principes sont destinés à s'appliquer en tant que règles générales du droit des contrats dans les Communautés européennes.

2 Ils s'appliquent lorsque les parties sont convenues que leur contrat serait régi par eux.

3 Ils peuvent recevoir application

(a) lorsque les parties sont convenues que leur contrat serait régi par "les principes généraux du droit", la "lex mercatoria", ou une expression similaire;

(b) lorsque les parties n'ont pas choisi de système ou de règles de droit devant régir leur contrat.

4 Ils peuvent, en cas d'insuffisance du système ou des règles de droit applicables, procurer la solution de la question posée.

Chapitre 1 Dispositions générales

Unidroit art. 1.1: Liberté contractuelle

Les parties sont libres de conclure un contrat et d'en fixer le contenu.

[Principes européens art. 1.102: Exclusion ou modification des Principes]

> 1 Under these Principles, parties are free to enter into a contract and to determine its contents, subject to the requirements of good faith and fair dealing, and the mandatory rules established by these Principles.
>
> 2 The parties may exclude the applicability of any of these Principles or derogate from them or their effects.

[Article 1.101A: Validity of Choice of the Principles]

> The existence and validity of the agreement of the parties as to the choice of these Principles shall be determined by these Principles as if the consent were valid. Nevertheless a party may rely on the law of the country in which he has his habitual residence to establish that he did not agree if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the Principles.

Principes européens art. 0.00: Règles impératives

> Where the law of the forum so allows, the parties may choose to have their contract governed by the Principles as if they were a legal system, so that national mandatory rules are not applicable. Effect should be given to those mandatory rules of national, supranational or international law which are applicable irrespective of which law governs the contract.

Unidroit art. 1.6: Interprétation et comblement des lacunes

> 1 Pour l'interprétation de ces Principes, il sera tenu compte de leur caractère international et de leur finalité, notamment de la nécessité de promouvoir l'uniformité de leur application.
>
> 2 Les questions qui entrent dans le champ d'application de ces Principes, mais que ceux-ci ne tranchent pas expressément, sont, dans la mesure du possible, réglées conformément aux

principes généraux dont ils s'inspirent.

Unidroit art. 1.7: Bonne foi

1 Les parties sont tenues de se conformer aux exigences de la bonne foi dans le commerce international.

2 Elles ne peuvent exclure cette obligation ni en limiter la portée.

Chapitre 2 Formation

Unidroit art. 2.15: Mauvaise foi dans les négociations

1 Les parties sont libres de négocier et ne peuvent être tenues pour responsables si elles ne parviennent pas à un accord.

2 Toutefois, la partie qui, dans la conduite ou la rupture des négociations, agit de mauvaise foi est responsable du préjudice qu'elle cause à l'autre partie.

3 Est notamment de mauvaise foi la partie qui entame ou poursuit des négociations sachant qu'elle n'a pas l'intention de parvenir à un accord.

Unidroit art. 2.17: Clause d'intégralité

Le contrat écrit qui contient une clause stipulant que le document renferme toutes les conditions dont les parties sont convenues ne peut être contredit ou complété par la preuve de déclarations ou d'accords antérieurs. Ces déclarations ou accords peuvent cependant servir à l'interprétation du document.

[Principes européens art. 2.106: Merger Clause

1 If the parties have concluded a written contract which contains an individually negotiated clause that the written contract embodies all the terms of the contract (merger clause) any prior statements, undertakings or agreements which are not embodied in the writing do not form part of the contract.

2 If the merger clause is not individually negotiated it will only establish a presumption that the parties intended that their prior statements, undertakings or agreements do not form part of the contract. This rule may not be excluded or restricted.

3 The parties' prior statements may be used to interpret the contract. This rule may not be excluded or restricted except by an individually negotiated clause.

4 A party may by his statements or conduct be precluded from asserting a merger clause to the extent that the other party has reasonably relied on the statements or conduct.

Unidroit art. 2.20: Clauses inhabituelles

1 Une clause reproduisant une clause-type est sans effet lorsqu'elle est d'une nature telle que l'autre partie ne pouvait raisonnablement s'attendre à la voir figurer au contrat, à moins que celle-ci n'y consente expressément.

2 Pour déterminer si une clause est d'une telle nature, on prend en considération son contenu, le langage employé ou sa présentation.

Unidroit art. 2.22: Désaccord sur les clauses-types

Lorsque les parties utilisent des clauses-types sans parvenir à un accord sur celles-ci, le contrat est néanmoins conclu sur la base des clauses convenues et des clauses-types qui, pour l'essentiel, sont communes aux parties, à moins que l'une d'elles ne signifie à l'autre, soit à l'avance, soit ultérieurement et sans retard indu, qu'elle n'entend pas être liée par un tel contrat.

[Principes européens art. 5.210 Conflicting general conditions]

1 If the parties have reached agreement except that the offer and acceptance refer to conflicting general conditions of contract, a contract is nonetheless formed. The general conditions form

part of the contract to the extent that they are common in substance.

(2) However, no contract is formed

(a) if one party has indicated in advance, explicitly, and not by way of general conditi ons, that he does not intend to be bound by a contract on the basis of paragraph 1; or

(b) if later on, one party, without undue delay, informs the other party that he does not intend to be bound by such contract.

Chapitre 3 Validité

Unidroit art. 3.10: Avantage excessif

1 La nullité du contrat ou de l'une de ses clauses pour cause de lésion peut être invoquée par une partie lorsqu'au moment de sa conclusion, le contrat ou la clause accorde injustement un avantage excessif à l'autre partie. On doit, notamment, prendre en considération:

(a) le fait que l'autre partie a profité d'une manière déloyale de l'état de dépendance, de la détresse économique, de l'urgence des besoins, de l'imprévoyance, de l'ignorance, de l'in expérience ou de l'inaptitude à la négociation de la première; et

(b) la nature et le but du contrat.

2 Le tribunal peut, à la demande de la partie lésée, adapter le contrat ou la clause afin de le rendre conforme aux exigences de la bonne foi en matiére commerciale.

3 Le tribunal peut également adapter le contrat ou la clause à la demande de la partie ayant re¢u une notification d'annulation pourvu que l'expéditeur de la notification en soit informé sans tarder et qu'il n'ait pas agi en conséquence. Les dispositions du paragraphe 2 de l'article 3.13 sont alors applicables.

[Principes européens art. 4.110: Unfair terms which have not been negotiated individually]

> 1 A party may avoid a term which has not been negotiated individually if, contrary to the requirements of good faith and fair dealing, it causes a significant imbalance in the parties' rights and obligations arising under the con tract to the detriment of that party, taking into account the nature of the performance to be made under the contract, all the other terms of the contract and the circumstances at the time the contract was concluded.
>
> 2 A term defining the main subject matter of the contract or the price may not be avoided under this Article merely because of (an) imbalance between the price and the performance to be made in exchange.

Directive 93/13/CEE concernant les clauses abusives dans les contrats conclus avec les consommateurs

> Article 3
>
> 1 Une clause d'un contrat n'ayant pas fait l'objet d'une négociation individuelle est considérée comme abusive lorsque, en dépit de l'exigence de bonne foi, elle crée au détriment du consommateur un déséquilibre significatif entre les droits et obligations des parties découlant du contrat.
>
> Article 6
>
> 1 Les États membres prévoient que les clauses abusives figurant dans un contrat conclu avec un consommateur par un professionnel ne lient pas les consommateurs, dans les conditions fixées par leurs droits nationaux, et que le contrat restera contraignant pour les parties selon les mêmes termes, s'il peut subsister sans les clauses abusives.

Cf. Loi no 95-96 du 1er février 1995 concernant les clauses abusives et la présentation des contrats, JO 2 février 1995, no 67 286, ainsi que Jacques Ghestin et Isabelle Marchessaux-van Melle, L'application en France de la directive visant à éliminer les clauses abusives après l'adoption de la loi no 95-96 du 1er février 1995, JCP 1995, 3854.

Chapitre 4 Interprétation

Unidroit art. 4.6: Régle contra proferentem

> En cas d'ambiguïté, les clauses d'un contrat s'interprètent de préférence contre celui qui les a proposées.

Unidroit art. 4.7: Divergences linguistiques

> En cas de divergence entre deux ou plusieurs versions linguistiques faisant également foi, préférence est accordée à l'interprétation fondée sur une version d'origine.

Chapitre 5 Contenu

Principes européens art. 6.101: Statements giving rise to contractual obligations

> (1) A statement by one party before or when the contract is concluded is to be treated as a term of the contract if that is how the other party reasonably understood it in the circumstances including
>
> (a) the apparent importance of the statement to the other party,
>
> (b) whether the party was making the statement in the course of business, and
>
> (c) the relative expertise of the parties.
>
> (2) If one of the parties is a professional supplier who gives information about the quality or use of services or goods or other property when marketing or advertising them or otherwise before the contract for them is made, the statement is to be treated as a term of the contract unless it is shown that the other party knew or could not be unaware that the statement was incorrect.
>
> (3) Such information and undertakings given by a person advertising or marketing services, goods or other property for a professional supplier or by a person in earlier links of the business chain will

also be treated as a contractual undertaking by the professional supplier, unless he did not know and had no reason to know of the information or undertaking.

Unidroit art. 5.7: Fixation du prix

1 Lorsque le contrat ne fixe pas de prix ou ne prévoit pas le moyen de le déterminer, les parties sont réputées, sauf indication contraire, s'être référées au prix habituellement pratiqué lors de la conclusion du contrat, dans la branche commerciale considérée, pour les mêmes prestations effectuées dans des circonstances comparables ou, à défaut d'un tel prix, à un prix raisonnable.

2 Lorsque le prix qui doit être fixé par une partie s'avère manifestement déraisonnable, il lui est substitué un prix raisonnable, nonobstant toute stipulation contraire.

3 Lorsqu'un tiers chargé de la fixation du prix ne peut ou ne veut le faire, il est fixé un prix raisonnable.

4 Lorsque le prix doit être fixé par référence à un facteur qui n'existe pas, a cessé d'exister ou d'être accessible, celui-ci est remplacé par le facteur qui s'en rapproche le plus.

Cf. Cass. ass. plén. 1er déc. 1995 Cofratel c/ Bechtel France, Montparnasse c/ Alcatel Bretagne, Atlantique de téléphone c/ SUMACO, Vassali c/ Gagnaire, JCP 1996, 22 565.

Chapitre 6 Exécution

Unidroit art. 6.2.2: Hardship: définition

Il y a hardship lorsque surviennent des événements qui altèrent fondamentalement l'equilibre des prestations, soit que le coût de l'exécution des obligations ait augmenté, soit que la valeur de la contre-prestation ait diminué, et

(a) que ces événements sont survenus ou ont été connus de la partie lésée après la conclusion du contrat;

(b) que la partie lésée n'a pu, lors de la conclusion du contrat, raisonnablement prendre de tels événements en considération;

(c) que ces événements échappent au contrôle de la partie lésée; et

(d) que le risque de ces événements n'a pas été assumé par la partie lésée.

Principes européens art. 2.117: Changement de circonstances

1 Une partie est tenue de remplir ses obligations, quand bien même l'exécution en serait devenue plus onéreuse, soit que le coût de l'exécution ait augmenté, soit que la valeur de la contre-prestation ait diminué.

2 Cependant, les parties ont l'obligation d'engager des négociations en vue d'adapter leur contrat ou d'y mettre fin si cette exécution devient onéreuse à l'excès pour l'une d'elles en raison d'un changement de circonstances

(a) qui est survenu après la conclusion du contrat ou qui, bien qu'intervenu auparavant, n'a été connu et ne pouvait raisonnablement être connu par les parties;

(b) qui ne pouvait être raisonnablement pris en considération au moment de la conclusion du contrat;

(c) et dont la partie lésée n'a pas à supporter le risque en vertu du contrat.

3 Faute d'accord des parties dans un délai raisonnable, le tribunal peut

(a) mettre fin au contrat à la date et aux conditions qu'il fixe;

(b) ou l'adapter de fa¢on à distribuer équitablement entre les parties les pertes et profits qui résultent du changement de circonstances;

(c) dans l'un et l'autre cas, il peut ordonner la réparation du préjudice que cause à l'une des

parties le refus par l'autre de négocier ou sa rupture de mauvaise foi des négociations.

Cf. Gaz de Bordeaux, Conseil d'Etat 30 mars 1916, DP 1916.3. 25; Ghestin-Billiau-Jamin no 283.

Chapitre 7 Inexécution

Unidroit art. 7.3.1: Droit à la résolution

1 Une partie peut résoudre le contrat s'il y a inexécution essentielle de la part de l'autre partie.

2 Pour déterminer ce qui constitute une inexécution essentielle, on prend notamment en considération les circonstances suivantes:

(a) l'inexécution prive substantiellement le créancier de ce qu'il était en droit d'attendre du contrat, à moins que le débiteur n'ait pas prévu ou n'ait pu raisonnablement prévoir ce résultat;

(b) la stricte exécution de l'obligation est de l'essence du contrat;

(c) l'inexécution est intentionnelle ou téméraire;

(d) l'inexécution donne à croire au créancier qu'il ne peut plus compter dans l'avenir sur l'exécution du contrat;

(e) le débiteur subirait, en cas de résolution, une perte excessive résultant de la préparation ou de l'exécution du contrat.

3 En cas de retard, le créancier peut également résoudre le ontrat si le débiteur n'exécute pas dans le délai visé à l'article 7.1.5.

Principes européens art. 4.301: Droit de résoudre le contrat

1 Une partie peut résoudre le contrat s'il y a inexécution essentielle de la part du cocontractant.

2 En cas de retard, le créancier peut également

résoudre le contrat en vertu de l'article 3.106, alinéa 3.

Unidroit art. 7.3.3: Inexécution anticipée

Une partie est fondée à résoudre le contrat si, avant l'échéance, il est manifeste qu'il y aura inexécution essentielle de la part de l'autre partie.

Principes européens art. 4.304: Inexécution par anticipation

Lorsque, dès avant la date à laquelle une partie doit exécuter, il est manifeste qu'il y aura inexécution essentielle de sa part, le cocontractant est fondé à résoudre le contrat.

Chapitre 8 Mandat

Principes européens art. 3.205: Conflict of Interests

1 If a contract concluded by an agent involves the agent in a material conflict of interests of which the third party knew or could not have been unaware, the principal may avoid the contract according to the provisions of articles 6.112 to 6.116.

2 There is presumed to be a material conflict of interests where

(a) the agent also acted as agent for the third party; or

(b) the contract was with himself in his personal capacity.

3 However, the principal may not avoid the contract

(a) if he had consented to or could not have been unaware of the agent's so acting; or

(b) if the agent had disclosed the conflict of interest to him and he had not objected within a reasonable time.

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See the special issue of the European Review of Private Law 1997/2.

2

See Monique Goyens (Ed.), Directive 85/374/EEC on product liability: ten years after, Louvain-la-Neuve 1996; X. Lewis and others, special issue European Review of Private Law 1994, p. 183-266.

3

Chapter 5 by Müller-Graff.

4

See Geraint Howells, Comparative Product Liability, Aldershot 1993, p. 20 ff.

5

See Stephen Weatherill, EC Consumer Law and Policy, Harlow: Longman 1997, p. 30-35.

6

Erwin Deutsch and Jochen Taupitz (Eds.), Haftung der Dienstleistungsberufe - natürliche Vielfalt und europäische Vereinheitlichung, Heidelberg 1993; Sigurd Littbarski (Ed.), Entwurf einer Richtlinie über die Haftung bei Dienstleistun gen, Köln 1992.

7

The European Consumer Law Group, a network of consumer advocates, for instance was highly critical of the draft.

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Two examples are the development of the law of legitimate expectations and the reception of the idea of proportionality into English law - see Jürgen Schwarze, European Administrative Law, London/Luxembourg 1992, p. 869-870. The reception has met with scepticism from some authors who simply believe proportionality non transplantable as such - see Sophie Boyron, Proportionality in English Administrative Law: A Faulty Translation?, (1992) 12 *Oxford Journal of Legal Studies* 237-264.

9

Van Gerven, Towards a European Civil Code II, Chapter 6.

10

See Zaphiriou, Harmonization of Private Rules Between Civil and Common Law Jurisdictions, 38 *American Journal of Comparative Law* (1990). See as to the position of Scots law various essays in *The Civilian Tradition and Scots Law/Aberdeen Quincentenary Essays,* Berlin: Duncker & Humblot 1997 and *Scots Law into the 21st Century - Essays in Honour of W.A. Wilson*, Edin burgh: Green/Sweet & Maxwell, 1996, 214 p.).

11

Other examples include both North America - the harmonisation achieved by the Uniform Commercial Code and the Restatements is notorious - and Latin America. As to the latter see Alejandro M. Garro, Armonización y Unificación del derecho privado en América Latina: esfuerzos, tendencias y realidades, Roma 1992; the same, Unification and Harmonization of Private Law in Latin America, 40 *American Journal of Comparative Law*587-616 (1992).

12

Set out by Bollen and De Groot in Chapter 7 of the previous edition of Towards a European Civil Code.

13

Reiner Schulze, European Legal History - A New Field of Research in Germany, 13 *Journal of Legal History* 270-295 (1992). See also the author's*Die europäische Rechts- und Verfassungsgeschichte - zu den gemeinsamen Grundlagen europäischer Rechtskultur*, Saarbrücken 1991, p. 19.

14

See G.R. de Groot, European Legal Education in the 21st Century, in: Bruno de Witte and Caroline Forder (Eds.), *The common law of Europe and the future of legal education/Le droit commun de l'Europe et l'avenir de l'enseignement juridique*, Deventer 1992, p. 7-30.

15

Official Journal of the European Communities 1989, No C 158/400. The resolution was voted again in 1993.

16

H. Kötz, 10 Tel Aviv University Studies in Law 195, 212 (1990).