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INTRODUCTORY NOTE

THOMAS ACKERMANN on behalf of the Editorial Board

This special issue of the Common Market Law Review convenes contributions to the conference "A Law and Economics Approach to European Contract Law", held at the University of Chicago Law School at 27–28 April 2012. All contributions examine various aspects of the Commission's Proposal for a Regulation on a Common European Sales Law (CESL) that was published by the EU Commission,[1] and, with few exceptions, most of them do so from a law-and-economics perspective. Readers of the Common Market Law Review will not fail to notice that both the topic and the approach of the articles published in this special issue differ significantly from regular issues. This is not meant as a departure from well-established editorial policy, but as an attempt to invigorate the debate on a subject that the Common Market Law Review can only occasionally take account of in its regular pages.

Originally driven by diverse forces such as traditional comparative law scholarship and consumer advocacy rooted in egalitarian social models, the study of European contract law has grown into an academic industry of its own, eagerly discussing, and also helping to shape EU legislation in this field. The proposed CESL marks a focal point for these efforts: despite lacking the all-embracing scope of the academic preparatory work in the Draft Common Frame of Reference,[2] the CESL could become the first comprehensive piece of EU legislation in contract law. Simply by being on the table, this proposal has already transformed the debate on European contract law, and will continue to do so in the future. By provoking agreement or disagreement on countless issues of form and substance, it absorbs much of the discussion in this field. There is no way to do justice to all aspects of this discussion in the space of a single conference issue, and this is not what we are trying to do in this special issue. Our intention is rather to offer a fresh "view of the cathedral".[3] There are two reasons for this: Firstly, it seems that, despite a variety of opinions, non-European voices have so far rarely been heard in the

1. COM(2011)635 final.
2. Study Group on a European Civil Code and Research Group on EC Private Law (Acquis Group) (Eds.), *Draft Common Frame of Reference: Principles, Definitions and Model Rules of European Private Law, Full Edition* (Sellier, 2009).
3. Cf. the title of Calabresi's and Melamed's seminal contribution to law and economics "Property rules, liability rules and inalienability: One view of the cathedral", 85 *Harvard L.Rev.* (1972), 1089, referring to Claude Monet's series of paintings of Rouen cathedral.

debate on European contract law. By bringing together U.S. and European academics in even numbers, the Chicago conference provided a unique chance to subject the proposal of a CESL to critical scrutiny by leading non-European scholars. For the European participants, this was a welcome opportunity to escape the self-referential routine of regular EU contract law discourse and to get to know an outside perspective. It is hoped that even those who believe that European contract law emanates from specific European values will at least share this sense of curiosity. Secondly, while it is true that economic insights have been taken on board in the preparatory stages of the CESL,[4] it is safe to say that an efficiency-based approach to the project has not yet featured prominently in the European debate. Many will not regret this as they generally reject utilitarian notions of justice. But fundamental opposition to the normative premises of efficiency-guided legal thinking, however high-minded it may be, does not justify economic ignorance. Setting aside ideological schisms for a moment, everyone will agree that it is useful to consider economic effects of the CESL. Against this background, the contributions to the Chicago conference have something to offer to all who are interested in the Commission's proposal.

If the outcome of the conference is unflattering for the CESL, so be it. The issues at stake are too interesting to let academic courtesy (if there ever is such a thing) spoil a rigorous argument. Can a uniform contract law be expected to increase cross-border trade? Is an optional instrument always "nice to have", as it leaves party autonomy and national laws untouched, or are there less appealing side-effects? Do consumers really benefit from the consumer protection rules envisaged by the Commission, or are the weakest going to pay the price for terms that, if at all, merely suit the interests of the happy few? Many, but not all contributions in this issue come to unfavourable answers to these and other questions concerning the CESL. No doubt others will accept this challenge. This could be a starting-point for an intense, and fruitful, debate. The Editorial Board of this Review are pleased to publish this special collection of essays and hope it provides a useful contribution to what will surely remain an intense and fruitful debate among EU private lawyers.

4. In particular due to the work of the Economic Impact Group (EIG) as part of the CoPECL (Common Principles of European Contract Law), a network of excellence funded by the EU. Results of the work of the EIG have been published by Larouche and Chirico (Eds.), *Economic Analysis of the DCFR: The work of the Economic Impact Group within CoPECL* (Sellier, 2010). See also Gerhard Wagner (Ed.), *The Common Frame of Reference: A View from Law & Economics* (Sellier, 2009).