

Introduction

This special issue of the *European Review of Private Law* is dedicated to the most recent legislative effort of the European Community to further the harmonisation of private law in Europe, namely the Directive on unfair terms in consumer contracts of 5th April 1993. All of the contributions to this volume are based on papers originally presented at a workshop at the European University Institute in Florence on 29-30th September 1994. It was the objective of this workshop to explore the exemplary significance of the harmonisation of the control of standardised terms and thus to contribute to the ongoing debate on the 'Europeanisation' of private law. This broader background agenda motivated both the preparation of the workshop and the development of the analytical framework presented by myself in the introductory paper to this volume. The pursuit of, and the obstacles to, a common European private law formed the main talking-point in Florence, and it will become apparent to readers of this volume that this overriding concern is reflected in each of the revised contributions presented here.

Harmonising the control of standardised terms goes, as Ewoud Hondius observes in his contribution, to the 'heart of contract law'. It concerns the delineation of private autonomy and mandatory rules, the legitimacy of legislative intervention and the appropriateness of legislative techniques. The debate on all of these issues has become truly international, and it was for this reason that the task of identifying common theoretical and practical problems was assigned to an American colleague.

William C. Whitford's report confirms both the trans-national character of issues of contract law and the dependency of theoretical and practical responses to them on contingent historical conditions and legal traditions. The group of articles in the following section (III) all reflect that dependency. Three of them analyse the impact of the Directive on specific national systems. Alain Bénabant deals with France, Giorgio de Nova with Italy and António Pinto Monteiro with Portugal. The short comment by Leone Niglia expands on one aspect of these analyses, namely the tensions which ensue from the selective approach of the Directive and its concept of minimum harmonisation. The contributions of Ewoud Hondius and Anne de Moor are both broader in scope and different in perspective. Basing his analysis on a comparative evaluation of European jurisdictions, Hondius characterizes the Directive as a 'centrepiece to European legislative initiatives on the law of contracts'. Anne de Moor's outlook is less optimistic. She points to the deep-seated conceptions which are the root-cause of the differences between common law contract law rules and practices and civil law jurisdictions; conceptions which can neither be harmonised by legislative fiat nor through supranational theoretical discourse.

The contributions in Section IV focus on the Community level. Mário Tenreiro highlights the core issues which required resolution during the various stages of the Directive's difficult legislative history. Norbert Reich evaluates the importance of the Directive in the light of a comprehensive analysis of the emerging rules and principles

of European consumer protection law. Steve Weatherill pursues the same approach, pointing to the need to give a specifically European meaning to legal concepts employed in the Directive and analysing the potential of the European Court of Justice to act as a catalyst in the construction of a common European private law.

The harmonisation objectives of the Directive on unfair terms in consumer contracts are modest. Even within the transactions affected by its scope of application, that is suppliers and consumers, the discrepancies between the emerging internal market and the territoriality of private law are likely to persist for the foreseeable future. There is thus every reason to explore the potential of private international law to facilitate trans-border contracting. Harald Koch, in his evaluation of this alternative to harmonisation, recommends an approach which would restrict European legislation to the harmonization of mandatory rules of public policy and would deploy private international law to promote competition among legal orders. These suggestions of general importance are complemented by Elena Rodríguez Pineau who furthers the exploration of the concept of a Community *ordre public*, and by Luigi Cannada-Bartoli who focuses on the choice-of-law implications of the Directive's provisions.

The two concluding contributions directly tackle the background agenda of the whole project, albeit in different ways. Hugh Collins' main concern is with the linkage between law and cultural identity. That linkage, he argues, is particularly important in areas of private law where rules and principles represent a complex web of social practices and moral values. European legislation will further a new and distinct cultural identity which may be incompatible with the cultural heritages of the Member States. Walter van Gerven's contribution, on the contrary, can be read as implicitly questioning the importance of these considerations. Although his analysis confirms that the potential of the European Court of Justice to contribute to the emergence of a common European private law is limited, he believes that comparative research on the practice of national courts will reveal common principles and legal developments upon which the conscious building of European private law might be based.

These introductory remarks are but a superficial guide to the contributions in this volume. As the reader will undoubtedly observe, the contributions to the sections on contract law theory, comparative law and European law constantly transcend their disciplinary boundaries; views and suggestions arising from the insights of one legal discipline often express a message of mutual importance. If this publication helps to bring to light and further this interaction, it has achieved one of its primary objectives.

The European University Institute, Florence financed and Dorothea Detring organised the workshop which brought the contributors to this volume and further discussants together. Angela Ward, Researcher at the Institute, showed remarkable persistence in painstakingly transformaing our continental-speak into English. Petra Wilkins and Gretchen Herzfeld of the Centre of European Policy in Bremen prepared the texts for publication. I wish to thank all of them - and the contributors to this volume who went through the process of writing, discussing and revising their articles.