

Editorial

Common European Sales Law: If It Does Not Help, It Won't Harm Either(?)

1. Europe is buzzing with excitement. Everywhere, the draft regulation on a common European sales law (CESL)¹ is being discussed. Whether or not an Optional Instrument should be introduced by the European Union is a hotly debated issue.² The battle between partisans and antagonists reminds one of the strife between Proculians and Sabinians in ancient Rome. In this Editorial, I want to emphasize two points in the discussion. One is the question whether the introduction of an Optional Instrument will have any impact at all if simply no trader proposes consumers to submit their contract to the optional regulation. The second point is not so much a thesis but rather a statement as to the explosion of German legal literature on the subject. In order to illustrate this, I will try to provide the reader with an overview of some of the more interesting papers on the European Commission's proposal.

2. The draft regulation on an optional CESL has generated a large number of conferences, special issues of law reviews and books. Conferences and seminars have been organized in, among others, Amsterdam (leap year conference),³ Brussels,⁴ Frankfurt,⁵ Hamburg,⁶ Leiden,⁷ Luxembourg,⁸ Maastricht,⁹ Marburg,¹⁰

1 COM(2011) 635 final.

2 The European Parliament's Economic Affairs Committee on 11 Oct. 2012 backed the proposal - <europa.eu/rapid/press-release_MEMO-12-777_en.htm>.

3 University of Amsterdam, Conference of 29 Feb. 2012. The papers by Caroline Cauffman and Marco Loos have been published in *NTBR* of May 2012. Other Dutch-language papers may be found in the *Maandblad voor Vermogensrecht*. 2012-7/8 This Editorial is partly based on my contribution to that special issue.

4 Interparliamentary EU Information Exchange, 27 Nov. 2012.

5 Goethe Universität Frankfurt am Main, Seminar 'Neue Entwicklungen im europäischen Vertragsrecht', 25 Jun.-1 Jul. 2012.

6 Symposium 'Optionales europäisches Privatrecht for the Verein der Freunde und Förderer des Max Planck Instituts', 18 Jun. 2011. The papers have been published in an updated version in *RabelsZeitschrift* April 2012.

7 Annual conference of the Leiden student association 'Suum cuique', 26 Apr. 2012.

8 Presentation by C. TWIGG-FLESNER, 'The Proposed Common European Sales Law - A Common Law Perspective', 20 Mar. 2012.

9 On its Brussels Campus. The papers have been published in the *Maastricht Journal* 1-2012.

10 Universität Marburg, 'Rechtsvergleichendes Seminar im Sommersemester 2012: Ein einheitliches europäisches Kaufrecht', Sonia Meier.

Münster,¹¹ Paris,¹² Trier,¹³ Vienna,¹⁴ Würzburg,¹⁵ and even Chicago.¹⁶ Law reviews such as the *Common Market Law Review*,¹⁷ *Contratto e impresa Europa*,¹⁸ *European Review of Contract Law*,¹⁹ *European Review of Private Law* (ERPL),²⁰ *Journal of International Trade Law and Policy*,²¹ *Maandblad voor Vermogensrecht*, *Maastricht Journal*,²² and *RabelsZeitschrift*²³ have devoted special issues to CESL. There is a surprisingly large number of German language books already on the market²⁴ and even a full-fledged commentary, in English but likewise originating in Germany.²⁵

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- 11 Conference 'European Law Days – The European Law of Obligations at a Turning Point', 17-19 Oct. 2012.
 - 12 Conference 'Université Paris II', 28 Nov. 2011.
 - 13 Europäische Rechtsakademie, 'An Optional European Sales Law', 9-10 Feb. 2012.
 - 14 European Law Institute, first workshop on the proposal for a common European sales law (CESL), 17-18 Nov. 2011 (with papers by Christian Alunaru, Carole Aubert de Vincelles, Fabrizio Cafaggi, Lars Edlund, Bénédicte Fauvarque-Cosson, Johan Gernandt, Paul Gilligan, Peter Limmer, Hans Schulte-Nölke, Pilar Perales Viscasillas, Matthias Storme, Sir John Thomas, Anna Veneziano, Christiane Wendehorst, Reinhard Zimmermann, and Fryderyk Zoll).
 - 15 University of Würzburg, 20 Jan. 2012 – see O. REMIEN, S. HERRLER & P. LIMMER (eds), *Gemeinsames Europäisches Kaufrecht für die EU?*, Beck, München 2012, 214 p.; ZEuP-Tagung 3-4 Apr. 2012.
 - 16 University of Chicago, 2 May 2012. The papers are available on SSRN and will be published in the *Common Market Law Review* 2012/6 of 2013/1.
 - 17 University of Chicago, 'Conference on European Contract Law: A Law-and-Economics Perspective', 27-28 Apr. 2012 – see *Common Market Law Review* special issue (March 2013).
 - 18 *Contratto e impresa Europa* 2012, pp. 1-482.
 - 19 *ERCL* 2012, pp. 30-87, with papers by Jürgen Basedow, Dorota Leczykiewicz, and Ruth Sefton-Green, and pp. 241-366, with papers by Stefan Grundmann, Guido Comparato, Ruth Sefton-Green, Ralf Michaels, Jan Smits, Hugh Collins, Chantal Mak, and Martijn Hesselink.
 - 20 6. *ERPL* 2011, pp. 709-1000.
 - 21 11. *Journal of International Trade Law and Policy* 2012, No. 3, pp. 222-305.
 - 22 *Maastricht Journal* 1-2012, with papers by Eric Clive, Nicole Kornet, Gary Low, Ursula Pahl, and Giesela Rühl.
 - 23 *RabelsZ* April 2012.
 - 24 REMIEN, HERRLER & LIMMER, 2012; M. SCHMIDT-KESSEL (ed.), *Ein einheitliches europäisches Kaufrecht? Eine Analyse des Vorschlags der Kommission*, Sellier, München 2012, 464 p.; SCHULTE-NÖLKE, 2011; D. STAUDENMAYER, *Vorschlag für eine Verordnung des Europäischen Parlaments und des Rates über ein Gemeinsames Europäisches Kaufrecht*, Beck, München 2012, 93 p.; TWIGG-FLESNER, Springer 2012; C. WENDEHORST & B. ZÖCHLING-JUD (eds), *Am Vorabend eines Gemeinsamen Europäischen Kaufrechts*, Manz, Vienna 2012.
 - 25 R. SCHULZE (ed.), *Common European Sales Law (CESL)*, Nomos, Baden-Baden 2012, 780 p., with chapters by Christiane Wendehorst (Vienna) on the 'chapeau' and Arts 58-65 (interpretation), Hans Schulte-Nölke (Osnabrück) on Arts 1-6 and 9-12 (general principles), Denis Mazeaud (Paris) and Natacha Sauphanor-Brouillaud (Versailles) on Arts 7 and 79-86 (unfair contract terms), Fryderyk Zoll (Cracow) on Arts 8, 87-122 (digital content) and 140-158 (transfer of risk, rights and duties), Geraint Howells (Manchester) on Arts 13-29 (pre-contractual

Basically, the authors of the various publications referred to above have either given a positive appraisal of the project, albeit usually with reservations regarding specific proposals, or rejected the Optional Instrument. However, among the latter there is a widely held view that if the proposal does not help, it does not harm either. This is a view that I wish to challenge in this Editorial. I am myself in favour of the Optional Instrument – although in my view, a two-year period of reflection to substantially improve the text would be necessary.²⁶ However, seen from the viewpoint of an adversary, it would in my mind be unwise to adopt the Instrument. The lenient attitude of opponents of the proposal is based on the understanding that if no one opts in, the Optional Instrument will have no impact. So, opponents argue, let the Regulation be adopted, and the fact that no one opts in will defeat the project by itself. This view, I submit with respect, is incorrect. Thanks to the interpretation in conformity with directives, provisions such as those on reasonableness and good faith (Article 2), if the proposal is adopted, may be applied outside the few directives where they have been introduced (unfair contract terms and commercial agents²⁷), whereas the rules on formation may be applied to forum choice clauses.²⁸ It is not unlikely that some of the regulation's opponents have never considered this possibility.

3. Now arriving at the second question, I will consider the issue why it is that the CESL seems to provoke the German-speaking part of Europe so much more than other linguistic communities? The reason may be the following. Christian Müller-Graff has pointed out that the draft regulation is available in all official languages, including German. Until then, the Feasibility Study and its drafts existed only in English. Although English is comprehensible to most German lawyers, it does make discussion of technical issues awkward. The present abundance of German language commentaries is most certainly attributable to this linguistic argument.

4. What does this first issue of the 2013 volume of ERPL bring us? First, there is a survey of empirical studies collected by Stefan Vogenauer (Oxford).

relations), Thomas Watson (Münster) on Arts 13-29 (pre-contractual relations) and 140-158 (transfer of risk, rights and duties), Evelyne Terryn (Leuven) on Arts 30-39 (formation), Reiner Schulze (Münster) on Arts 40-47 (right to withdraw), Thomas Pfeiffer (Heidelberg) on Arts 48-57 (defects of consent), Eva-Maria Kieninger (Würzburg) on Arts 66-78 (contents and effects), Gerhard Dannemann (Berlin) on Arts 123-139 (duties of the buyer), Damjan Možina (Ljubljana) on Arts 159-171 (compensation and interest), Matthias Lehmann (Halle) on Arts 172-177 (restitution), Peter Møgelvang-Hansen (Copenhagen) on Arts 178-186 (prescription). All chapters have the same order: (1) function, (2) context, (3) interpretation, (4) criticism.

26 In this sense, also E.-M. KIENINGER, 'Allgemeines Leistungsstörungenrecht im Vorschlag für ein Gemeinsames Europäisches Kaufrecht', in Schulte-Nölke, 2011, pp. 205-228.

27 M. STÜRNER, 'Das Verhältnis des Gemeinsamen Europäischen Kaufrechts zum Richtlinienrecht', *Schulte-Nölke* 2012, pp. 47-84.

28 M. GEBAUER, in Schmidt-Kessel (ed.), 2012, pp. 121-145.

These studies focus on the question whether there is a competition in Europe in the areas of contract law and dispute resolution. On the basis of this research, the author challenges the assumption that there exists such competition.

The proposed Regulation on a CESL has already attracted much attention in ERPL and is bound to continue to do so in the coming months. In this issue, Paula Giliker (Bristol) examines the treatment of pre-contractual liability in CESL. This is a notion that divides jurisdictions, most notably those of the common and civil law. The imposition of a duty to negotiate in good faith, in her view, presents a challenge to harmonization. Marco Loos and Harriët Schelhaas (Amsterdam) defend the position that as between CESL and CISC, CESL is the better choice for commercial parties. Martin Illmer (Hamburg) criticizes CESL for missing the chance to provide a comprehensive service contract law. Geert Van Calster (Leuven) analyses a case of the English Court of Appeal of 24 January 2012 in the long-running West Tankers litigation about the exclusion of arbitration from the Brussels I Regulation. Joasia Luzak (Amsterdam) discusses the ePrivacy Directive regarding cookies. Maud Piers (Gent) proposes a seminal consumer arbitration model for Europe. Barbara Den Tandt and Marianne Verhulst (Leuven) finally write about the temporal scope of the Rome II Regulation after the *Homawoo* case.

5. Case notes, according to the Member of our Advisory Board, Hein Kötz, are the trademark of ERPL. We are aware of the fact that the coordination of a case note is not a simple affair. A case must be selected, its contents will often have to be translated, annotators must be acquired, their annotations must be revised, and enforcing deadlines requires almost supra-human skills. We therefore are grateful to our Editor, Miquel Martin-Casals, for his coordination of the *Sienkiewicz* case of the UK Supreme Court ([2011] UKSC 10). His general introduction is followed by comparative notes from the Czech Republic, Germany, Italy and the Netherlands. A ‘left-over’ of an annotation published earlier is the Hungarian case note to the Norwegian wind power case by Ferencz Szilágyi..

6. This issue of ERPL further contains a conference report of a seminar on competition in international sales law by Mark Kawakami. It also carries book reviews by Merlin Majoor of *The Mind and Method of the Legal Academic* by Jan Smits, by Michel Cannarsa of Nadia Coggiola’s *Alla ricerca delle cause*, and by Elise Goossens of Jens Scherpe’s *Marital Agreements and Private Autonomy in Comparative Perspective*. Finally, your Co-editor-in-chief reviews the *Festschrift* for Ole Lando, his second one.

7. *Alterum non datur*. Those who celebrate a jubilee will usually receive only one *Festschrift*. Not so Ole Lando, the Father of the *Principles of European Contract Law*, which in turn were the basis for the *Draft Common Frame of Reference*, which again provided the groundwork for the Optional Sales Instrument discussed above. Ever since its founding, Ole Lando has also been an active Member of our Advisory Board. In September 2012, at the occasion of his nineteenth birthday, he received a *Festschrift*, the second in his honour (see the

book review elsewhere in this issue). At the age of seventy, he had already received a first such volume. ERPL is glad to have such a great European in its ranks.

8. Congratulations are also due to another Member of our Advisory Board, Dean Spielmann. *Our man* in Luxembourg has recently been nominated President of the European Court of Human Rights. We do of course hope that this will contribute to more papers on human rights issues in private law in ERPL.

9. In our next issue, we hope to publish, among others, a paper by Leo Jaervinen on Finnish legal culture and annotations of the French *DES* case.

Ewoud Hondius

Bibliography

T. Ackermann, 'Public Supply of Optional Standardized Consumer Contracts: A Rationale for the Common European Sales Law?', *CMLR March 2013* (in preparation).

T. Ackermann & J.-U. Franck, 'Defects in Consent: An Assessment of Chapter Five of the Proposal for a Common European Sales Law', *European Review of Contract Law* 2012, pp. 113-138.

G. Ajani, 'Un diritto comune europeo della vendita? Nuova complessità', *Contratto e impresa* 2012, pp. 71-85.

G. Alpa, 'Towards a European Contract Law', *Contratto e impresa* 2012, pp. 115-124.

C. Armbrüster, 'Diversity vs. Unity - the Merits of a Step by Step Approach to a European Contract Law', *Contratto e impresa* 2012, pp. 187-192.

D. Baird, 'Precontractual Disclosure Duties under the Common European Sales Law', *CMLR March 2013* (in preparation).

C. Baldus, 'Lo strumento opzionale: un'opzione per un nulla concettuale?', *Contratto e impresa* 2012, pp. 61-70.

O. Bar-Gill & O. Ben-Shahar, 'Regulatory Techniques in Consumer Protection: A Critique of the Common European Sales Law?', *CMLR March 2013* (in preparation).

J. Basedow, 'An EU Law for Cross-Border Sales Only - Its Meaning and Implications in Open Markets', in M. Joachim Bonell, M.-L. Holle, P. Arnt Nielsen (eds), *Liber amicorum Ole Lando*, DJØF, Copenhagen 2012, pp. 27-44.

J. Basedow, 'An Optional Instrument and the Disincentives to Opt In', *Contratto e impresa* 2012, pp. 37-47.

J. Basedow, 'The Optional Instrument of European Contract Law: Opting in through Standard Terms - A Reply to Simon Whittaker', *European Review of Contract Law* 2012, pp. 82-87.

H. Beale, 'The PECL and Consumer Remedies under the CESL', in M. Joachim Bonell, M.-L. Holle, P. Arnt Nielsen (eds), *Liber amicorum Ole Lando*, DJØF, Copenhagen 2012, pp. 45-58.

- L. Bernstein, Custom and the CESL, *CMLR March* 2013 (in preparation).
- R. Brownsword *et al.* (eds), *The Foundations of European Private Law*, Hart, Oxford 2011, 609 p.
- C. Busch, 'Scope and Content of an Optional European Contract Law', *Contratto e impresa* 2012, pp. 193-206.
- L. Cabella Pisu, 'La codificazione europea del diritto contrattuale tra progetti dottrinali, strategie politiche e interessi di categoria', *Contratto e impresa Europa* 2012, pp. 207-238.
- F. Cafaggi, 'CESL and Precontractual Liability from a Status to a Transaction Based Approach?', *CMLR March* 2013 (in preparation).
- J. Cartwright *et al.*, 'Grensoverschrijdend contracteren? Dat lossen we samen wel op', *NJB* 2011, pp. 1246-1250.
- A.G. Castermans, 'De niet welgeïnformeerde consument', *Maandblad voor Vermogensrecht* 2012, pp. 43-46.
- C. Cauffman, 'Het voorstel voor een Verordening over een gemeenschappelijk Europees kooprecht, zo gek nog niet?', *NTBR* 2012, pp. 153-165.
- A. Ciatti, 'Sull'attitudine unificatrice del diritto privato dell'Unione Europa', *Contratto e impresa* 2012, pp. 180-186.
- E. Clive, 'A General Perspective on the European Commission's Proposal for a Regulation on a Common European Sales Law', *Maastricht Journal* 1-2012.
- H. Collins, 'Cosmopolitanism and Transnational Private Law', *European Review of Contract Law* 2012, pp. 311-325.
- G. Comparato, 'What Do Nationalists Maximise? A Public Choice Perspective on the (Non-)Europeanization of Private Law', *European Review of Contract Law* 2012, pp. 245-259.
- C. Cravetto & B. Pasa, 'The "Non-sense" of Pre-contractual Information Duties in Case of Non-concluded Contracts', *ERPL* 2011, pp. 759-785.
- A. De Boeck, 'B2b Information Duties in the Feasibility Study, Analysis of Article 23', *ERPL* 2011, pp. 787-797.
- A. De Boeck, 'Overzicht van en beschouwingen bij de precontractuele informatielichten in het nieuwe gemeenschappelijk Europees kooprecht (GEKR)', *Maandblad voor Vermogensrecht* 2012, pp. 47-52.
- G. De Cristofaro, 'Il futuro "Diritto comune europeo" della vendita mobiliare : profili problematici della proposta di regolamento presentata dalla Commissione UE', *Contratto e impresa* 2012, pp. 358-372.
- P. De Tavernier, 'Is Europa bevoegd een gemeenschappelijk kooprecht uit te vaardigen?', *Maandblad voor Vermogensrecht* 2012, pp. 30-35.
- P. De Tavernier, 'Le droit commun européen optionnel de la vente: réaction d'un privatiste du "plat pays"', *Contratto e impresa* 2012, pp. 413-426.
- L. DiMatteo, 'Common European Sales Law: A Critique of its Rationales, Functions, and Unanswered Questions', 11, 3. *Journal of International Trade Law and Policy* 2012, pp. 222-240.

W. Doralt, 'The Optional European Contract Law and Why Success or Failure May Depend on Scope Rather than Substance', *Max Planck Research Paper* 2012.

Draft Statement of the European Law Institute on the Proposal for a regulation on a common European sales law, COM(2011) 635 final.

H. Eidenmüller, 'What Can Be Wrong with an Option? The Proposal for an Optional Common European Sales Law', *CMLR March* 2013 (in preparation).

R. Epstein, 'Harmonization, Heterogeneity, and Regulation: Why the Common European Sales Law Should Be Scrapped', *CMLR March* 2013 (in preparation).

European Law Institute, *Statement on the Proposal for a Regulation on a Common European Sales Law*, www.europeanlawinstitute.eu, 2012.

B. Fauvarque-Cosson, 'Zoé Jacquemin, Regards sur le droit commun européen de la vente', *Contratto e impresa* 2012, pp. 330-342.

M.I. Feliu Rey, 'Un codice europeo dei contratti: alcune riflessioni e qualche dubbio', *Contratto e impresa Europa* 2012, pp. 167-172.

R. Feltkamp & F. Vanbossele, 'The Optional Common European Sales Law for European Contract Law: Better Buyer's Remedies for Seller's Non-performance in Sales of Goods?', *ERPL* 2011, pp. 873-905.

E. Ferrante, 'Diritto privato europeo e Common European Sales Law (CESL)/Aurora o crepuscolo del codice europeo dei contratti?', *Contratto e impresa* 2012, pp. 461-482.

H. Fleischer, 'Optionales europäisches Privatrecht ("28. Modell")', *RabelsZeitschrift* 2012, pp. 235-252.

M.M. Fogt, 'Private International Law Issues by Opt-Out and Opt-In Instruments of Harmonization: A Comparison between CISG and CESL', in M. Joachim Bonell, M.-L. Holle, P. Arnt Nielsen (eds), *Liber amicorum Ole Lando*, DJØF, Copenhagen 2012, pp. 117-149.

M. Fornasier, '28th versus 2nd Regime: An Optional European Contract Law from a Choice of Law Perspective', *RabelsZeitschrift* 2012, pp. 401-442.

M. Franzoni, 'Dal codice europeo dei contratti al regolamento sulla vendita', *Contratto e impresa* 2012, pp. 350-358.

F. Galgano, 'Dai principi Unidroit al regolamento europeo sulla vendita', *Contratto e impresa* 2012, pp. 1-6.

M. Gebauer, 'Europäisches Vertragsrecht als Option', *Gemeineuropäisches Privatrecht* 2011, pp. 227-236.

F. Gomez, 'The Debate around a European Contract Law Code and the Proposal of a Common European Sales Law', *Contratto e impresa* 2012, pp. 86-97.

F. Gomez, 'Optional Law for Firms and Consumers: An Economic Analysis of Opting into the Common European Sales Law', *CMLR* 2013.

S. Grundmann, 'CESL, Legal Nationalism or a Plea for Appropriate Governance?', *European Review of Contract Law* 2012, pp. 241-244.

S. Grundmann, 'The Desirability of an Optional European Contract Law and the Impact of a Particular Design on this Question?', *CMLR March* 2013 (in preparation).

L. Grynbaum, 'The Option of a French Academic on the Proposal for a Regulation on Common European Sales', *Contratto e impresa* 2012, pp. 343-349.

R. Hardy, 'The Feasibility Study's Rules on Contract Interpretation', *ERPL* 2011, pp. 817-833.

H. Heiss, 'An Optional Instrument for European Insurance Contract Law', *RabelsZeitschrift* 2012, pp. 316-338.

J. Herbots, 'Why It Is Ill-Advised to Translate Consequential Damage by damage Indirect', *ERPL* 2011, pp. 931-949.

T. Heremans, 'Voorstel voor een gemeenschappelijk Europees kooprecht: een politiek en/of economisch project?', *Maandblad voor Vermogensrecht* 2012, pp. 12-19.

M. Hesselink, 'How to Opt into the Common European Sales Law? Brief Comments on the Commission's Proposal for a Regulation', *ERPL* 2012, pp. 195-211.

M. Hesselink, 'The Case for a Common European Sales Law in an Age of Rising Nationalism', *European Review of Contract Law* 2012, pp. 342-366.

R. Hilty, 'An Optional European Contract Law Instrument (28th model): Intellectual Property', *RabelsZeitschrift* 2012, pp. 339-373.

E.H. Hondius, 'Gemeenschappelijk Europees kooprecht: aan de slag ermee!', *Maandblad voor Vermogensrecht* 2012, pp. 177-185.

E.H. Hondius & A.L.M. Keirse, 'Optioneel Instrument van Europees contractenrecht: nieuw gezicht of facelift?', *NJB* 2011, pp. 2076-2082.

G. Howells, 'CESL - A Conscientious Objector', *Contratto e impresa Europa* 2012, pp. 312-315.

R. Illescas Ortiz & P. Perales Viscasillas, 'The Scope of the Common European Sales Law: B2B, Goods, Digital Content and Services', 11, 3. *Journal of International Trade Law and Policy* 2012, pp. 241-258.

A. Keirse, 'Why the Proposed Optional Common European Sales Law Has Not, but Should Have, Abandoned the Principle of All or Nothing: A Guide to How to Sanction the Duty to Mitigate the Loss', *ERPL* 2011, pp. 951-976.

A. Keirse, 'De potentiële kracht van optioneel contractenrecht', *Maandblad voor Vermogensrecht* 2012, pp. 20-29.

A.L.M. Keirse, M.-J. van der Heijden & F. Merab Samii, 'Naar een beter instrument voor Europees contractenrecht', *Contracteren* 2011, pp. 55-63.

M. van Kogelenberg, 'Remedies voor de koper in het GEKR: bomen waardoor het bos niet altijd goed te zien is', *Maandblad voor Vermogensrecht* 2012, pp. 62-70.

N. Kornet, 'The Common European Sales Law and the CISG - Complicating or Simplifying the Legal Environment?', *Maastricht Journal* 1-2012.

K. Kroll-Ludwigs, 'Ein optionales Vertragsrecht für Europa/Motor oder Hemmnis für den Binnenmarkt?', *Zeitschrift für Gemeinschaftsprivatrecht* 2012, pp. 181-188.

S. Kruisinga, 'The Seller's Right to Cure in the CISG and the Common European Sales Law', *ERPL* 2011, pp. 907-919.

O. Lando, 'Comments and Questions Relating to the European Commission's Proposal for a Regulation on a Common European Sales Law', *ERPL* 2011, pp. 717-728.

D. Leczykiewicz, 'Where Angels Fear to Tread': The EU Law of Remedies and Codification of European Private Law', *European Review of Contract Law* 2012, pp. 47-81.

M. Lehman, 'Auf dem Weg zu einem europäischen Vertragsrecht', *Gemeineuropäisches Privatrecht* 2011, pp. 218-226.

S. Levmore, 'Harmonization, Preferences, and Convergence?', *CMLR March* 2013 (in preparation).

K. Lilleholt, 'Passing of Risk and the Risk of Mystification: Some Drafting Issues', *ERPL* 2011, pp. 921-929.

M.B.M. Loos, 'De algemene voorwaarden-regeling in het voorstel voor een Gemeenschappelijk Europees kooprecht : een vergelijking met het Nederlandse recht', *NTBR* 2012, pp. 166-175.

G. Low, 'Unitas via diversitas/Can the Common European Sales Law Harmonize through Diversity?', *Maastricht Journal* 1-2012.

H. MacQueen, 'CESL Change of Circumstances: CISG, CESL and a Case from Scotland', 11, 3. *Journal of International Trade Law and Policy* 2012, pp. 300-305.

U. Magnus, 'CISG and CESL', in: Michael Joachim Bonell, Marie-Louise Holle, Peter Arnt Nielsen (eds), *Liber amicorum Ole Lando*, Copenhagen : DJØF, 2012, pp. 225-255.

U. Magnus, 'Interpretation and Gap-Filling in the CISG and in the CESL', 11, 3. *Journal of International Trade Law and Policy* 2012, pp. 266-280.

S. Martens, 'Die Regelung der Willensmängel im Vorschlag für eine Verordnung über ein Gemeinsames Europäisches Kaufrecht', *Archiv für die civilistische Praxis* 2011, pp. 845-885.

S. Mazzamuto, 'Il diritto europeo e la sfida del codice civile unitario', *Contratto e impresa* 2012, pp. 98-114.

E. McKendrick, *Contract Law/Text, Cases and Materials*, 5th edn, University Press, Oxford 2012, pp. 36-42.

R. Meijer *et al.*, 'Het gemeenschappelijk Europees kooprecht', *Maandblad voor Vermogensrecht* 2012, pp. 175-176.

R. Michaels, 'Code vs Code', *European Review of Contract Law* 2012, pp. 277-295.

H.W. Micklitz, 'Un futuro "certo" per lo strumento opzionale', *Contratto e impresa* 2012, pp. 48-60.

Office of Fair Trading, *Response to the Call for Evidence on a Common European Sales Law for the European Union – A Proposal for a Regulation from the European Commission*, <http://www.oft.gov.uk/OFTwork/consultations/responses/sales-law>.

U. Pahl, 'The Common European Sales Law – Have the Right Choices Been Made? A Consumer Policy Perspective', *Maastricht Journal* 1-2012.

C. Pavillon, 'De Nederlandse consument heeft niets te vrezen: het Europees kooprecht geeft meer dan het neemt', *Maandblad voor Vermogensrecht* 2012, pp. 175-176.

T. Pfeiffer, 'Unfaire Vertragsbestimmungen', *ERPL* 2011, pp. 835-853.

M. Piers, 'Cedric Vanleenhove, the Common European Sales Law/A Critical Assessment of a Valuable Initiative', *Contratto e impresa* 2012, pp. 427-453.

A. Porat, 'Mistake under the Common European Sales Law?', *CMLR March* 2013 (in preparation).

E. Posner, 'The Questionable Basis of the Common European Sales Law: The Role of an Optional Instrument in Jurisdictional Competition', *CMLR March* 2013 (in preparation).

O. Remien, S. Herrler & P. Limmer (eds), *Gemeinsames Europäisches Kaufrecht für die EU?*, Beck, München 2012, 214 p.

R. Rolli, 'La proposta di regolamento europeo sulla vendita nel processo di codificazione europea', *Contratto e impresa* 2012, pp. 373-396.

W.-H. Roth, *Stellungnahme zum 'Vorschlag für eine Verordnung des Europäischen Parlaments und des Rates über ein Gemeinsames Europäisches Kaufrecht'*, KOM(2011) 635 endg., www.bundestag.de/.

G. Rühl, 'The Common European Sales Law: 28th Regime, 2nd Regime or 1st Regime?', *Maastricht Journal* 1-2012.

J.W. Rutgers, 'De concept-verordening voor een Gemeenschappelijk Europees Kooprecht', *WPNR* 2011, No. 6915, pp. 49-50.

I. Samoy, T. Dang Vu & S. Jansen, 'Don't Find Fault, Find a Remedy', *ERPL* 2011, 855-872.

M. Schmidt-Kessel (ed.), *Ein einheitliches europäisches Kaufrecht? Eine Analyse des Vorschlags der Kommission*, Sellier, München 2012, 464 p.

H. Schulte-Nölke, 'Der Blue Button kommt – Konturen einer neuen rechtlichen Infrastruktur für den Binnenmarkt', *Zeitschrift für Europäisches Privatrecht* 2011, pp. 749-755.

H. Schulte-Nölke, F. Zoll, N. Jansen & R. Schulze, *Der Entwurf für ein optionales europäisches Kaufrecht*, Sellier, München 2012, 424 p.

R. Schulze (ed.), *Common European Sales Law (CESL)*, Nomos, Baden-Baden 2012, 780 p.

Scottish Law Commission, *An Optional European Sales Law: Advantages and Problems/Advice to the UK Government*, No. 6.22 et seq., www.scotlawcom.gov.uk/news/advice-on-european-sales-law/.

R. Sefton-Green, 'French and English Crypto-Nationalism and European Private Law', *European Review of Contract Law* 2012, pp. 260-276.

R. Sefton-Green, 'How Far Can We Go when Using the English Language for Private Law in the EU?', *European Review of Contract Law* 2012, pp. 30-46.

P. Sirena, 'The Rules about Restitution in the Proposal on a Common European Sales Law', *ERPL* 2011, pp. 977-1000.

J. Smits, 'Gemeenschappelijk Europees kooprecht gaat niet ver genoeg', *Ars Aequi* 2012, pp. 348-351.

J. Smits, 'What Do Nationalists Maximise? A Public Choice Perspective on the (Non-)Europeanization of Private Law', *European Review of Contract Law* 2012, pp. 296-310.

J. Smits, 'Contract Law as Optional Law: On the Potential and Limits of Choice?', *CMLR March* 2013 (in preparation).

D. Staudenmayer, *Vorschlag für eine Verordnung des Europäischen Parlaments und des Rates über ein Gemeinsames Europäisches Kaufrecht*, Beck, München 2012, 93 p.

M. Stürner, 'Kollisionsrecht und Optionales Instrument: Aspekte einer noch ungeklärten Beziehung', *Gemeineuropäisches Privatrecht* 2011, pp. 236-242.

K. Tonner, 'CESL and Consumer Contract Law: Integration or Separation?', *Contratto e impresa Europa* 2012, pp. 316-329.

C. Twigg-Flesner, *A Cross-Border-Only Regulation for Consumer Transactions in the EU*, Springer 2012, 76 p.

C. Twigg-Flesner, 'Dealing with Informational Asymmetries under the Proposed CESL and CISG', 11, 3. *Journal of International Trade Law and Policy* 2012, pp. 281-299.

C. Twigg-Flesner, 'Debate on the European Code of Contracts', *Contratto e impresa* 2012, pp. 157-166.

A. Vaquer Aloy, E. Bosch Capdevila & M.P. Sánchez González (eds), *Derecho Europeo de Contratos/Libros II y IV del Marco Común de Referencia*, Atelier, Barcelona 2012, two volumes, 1880 p.

A. Veneziano, 'Un diritto europeo per le contrattazioni on-line (anche) tra imprese?', *Contratto e impresa* 2012, pp. 454-460.

S. Vogenauer, 'Elaborare il diritto europeo dei contratti', *Contratto e impresa* 2012, pp. 125-156.

D. Voiroit & J. Sénéchal (eds), *Vers un droit européen des contrats spéciaux/Towards a European Law of Specific Contracts*, Larcier, Brussel 2012.

G. Wagner, 'Buyers' Remedies under the CESL: Rejection, Rescission, and the Seller's Right to Cure?', *CMLR March* 2013 (in preparation).

E. van Wechem & J. Spanjaard, 'Algemene voorwaarden in het GEKR in vergelijking met het Nederlandse BW', *Maandblad voor Vermogensrecht* 2012, pp. 53-61.

M. Weller, 'Die "Abhilfen" des Käufers im Kommissionsvorschlag für ein Gemeinsames Europäisches Kaufrecht: Neujustierung des Nacherfüllungsanspruchs im Rechtsvergleich', *Zeitschrift für Gemeinschaftsprivatrecht* 2012, pp. 173-181.

C. Wendehorst & B. Zöchling-Jud (eds), *Am Vorabend eines Gemeinsamen Europäischen Kaufrechts*, Manz, Vienna 2012.

F. von Westphalen, 'Das optionale Europäische Kaufrecht - eine Chance für Verbraucher und Unternehmer?', *ZIP (Zeitschrift für Wirtschaftsrecht)* 2011, p. 1985.

S. Whittaker, 'The Proposed "Common European Sales Law": Legal Framework and the Agreement of the Parties', 75 *The Modern Law Review* 2012, pp. 578-605.

S. Whittaker, 'Identifying Legal Costs of the Operation of the Common European Sales Law: Legal Framework, Scope of the Uniform Law and National Judicial Evaluations?', *CMLR March* 2013 (in preparation).

A. Zaccaria, 'La Commissione sale in cattedra/Basta con i diritti nazionali, solo anticaglie: tutti a scuola di "diritto commune europeo della vendita"', *Contratto e impresa Europa* 2012, pp. 173-179.

R. Zimmermann, 'Perspektiven des künftigen österreichischen und europäischen Zivilrechts', *Juristische Blätter* 2012, pp. 2-22.

R. Zimmermann, Smarrimenti, disordini, *Contratto e impresa* 2012, pp. 7-36.

F. Zoll, 'Searching the Optimum Way for the Unification and Approximation of the Private Law in Europe - A Discussion in the Light of the Proposal for the Common European Sales Law', *Contratto e impresa* 2012, pp. 397-413.

F. Zoll, 'The Binding Power of the Contract: Protection of Performance in the System of the Common European Sales Law', 11, 3. *Journal of International Trade Law and Policy* 2012, pp. 259-265.

N. Zorzi Galgano, 'Dal Codice europeo dei contratti al regolamento della vendita: la logica del sistema, anche con riferimento alla protezione del consumatore', *Contratto e impresa* 2012, pp. 239-311.