

Study Group on a European Civil Code

From the Chairman

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The Contribution of the Study Group on a European Civil Code to the European Convention

About the Study Group

1. The Study Group is a network of senior legal academics (including practitioners) from higher education institutions and courts across the European Union and a number of candidate countries. We are a scholarly and non-political undertaking and our work is supported financially by various national research councils. Our objective is to fashion a codified and annotated statement of the core of European private law. This, we foresee, would foster academic understanding and teaching of European private law, could serve the needs of parties engaged in cross-border negotiations or disputes, and, conceivably, might provide inspiration for future legislative measures at national and European levels. In its response to the European Commission's Communication on European Contract Law, the European Parliament has specifically identified the Study Group as one of the bodies to carry preparatory work forward.¹

The Need for a European Codification of Patrimonial Law

2. With the accession of new Member States the number of different systems of private law and the complexities this produces for commerce in the internal market increase exponentially. A uniform body of rules in those areas of private law which underpin business activity in the EU is essential to convert the quilt of separate national markets into a genuinely common market and ensure enterprises compete on a level playing field. Aside from economic benefits, common principles of patrimonial law touching daily transactions, whether

¹ Provisional Edition of the Minutes of 15 November 2001 (A5-0384/2001), European Parliament resolution on the approximation of the civil and commercial law of the Member States (COM(2001)398 – C5-0471/2001 – 2001/2187(COS)), para. 16 (in all language versions except the English).

undertaken by businesses or consumers, would also contribute (like the common currency) to a stronger identification at the grassroots level of the citizenry with European integration.

EU Competence in Harmonisation of Patrimonial Law

3. The partial and fragmentary nature of EU competence in the field of private law² encourages a segmental approach to harmonisation which disturbs the coherence of the interlocking concepts and principles in the national jurisdictions. A general and transparent empowerment of the EU in this field is needed to facilitate general measures on the basis of a wider and more systematic vision which do not cut across or undermine the existing sophisticated apparatus of private law in the Member States.

The Need for a European Law Academy and a European Law Institute

4. As European competences expand into areas of “lawyer’s” law, and to facilitate the scholarly work of preparing qualitatively sound European legislation in tune with diverse national legal traditions, there is a need for a permanent European institution to undertake the essential legal research into the different national legal systems (a European Law Institute) and a forum, with a membership drawn from Parliaments, academia, the legal professions and the courts across the EU, to review the “technical” excellence of drafts as a preliminary to legislative political debate (a European Law Academy). Some national legal systems have established public bodies at arm’s length from government charged with the tasks of keeping the law under review, preparing drafts and undertaking public consultation;³ in other Member States, *ad hoc* commissions of experts are appointed by Ministers of Justice to provide the necessary expertise. The same juristic “quality assurance” is required at a European level for European legislation. These institutions would also serve as generators of ideas based on long-term vision, unconstrained by legislative periods.

² E.g. EC Arts. 94-95 (ex Arts. 100-100a). For consumer protection, see Art. 153 (ex Art. 129a). On judicial cooperation in civil matters, see Art. 65 (ex Art. 73m).

³ In the United Kingdom, the Law Commission (for England and Wales) and the Scottish Law Commission; in the Republic of Ireland, the Law Reform Commission.