even if the wording of the national law had to be violated. She argues that EU Directives do not have a horizontal effect in private law and that, therefore, "the borderline for European interpretation [...] is the clear wording of the law" (p. 118). One might disagree with this quite traditional approach, but it is concisely argued, in particular by dealing with the question of the consequences of infringement of an EU Directive (pp. 116/117).

As regards the book as a whole, one is tempted to ask what the idea of this particular order of contributions was. Would it, for example, not have been better to group the various articles dealing with interpretation of contract together rather than presenting them piece-meal? One might also miss a clearer interrelation among the German, the Polish and the European law, which would, for instance, show the similarities and differences between the German and the Polish approach and refer conjointly to the discussion of Europeanization of contract law.

Nonetheless, it is an elegant little book that makes a valuable contribution to an important issue.

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R. Schulze & H. Schulte-Nölke (Eds.), European Private Law – Current Status and Perspectives, sellier.european publishers, Munich, 2011, 284 pages, ISBN (print) 978-3-86653-174-1, ISBN (eBook) 978-3-86653-933-4.

"Harmonization of private law in Europe is a multi-faceted notion, evoking different phenomena." Gómez and Ganuza begin the conclusion of their paper with those words (p. 55). And it is the impression one gains after reading the various contributions contained in this book. Harmonization and unification of the law of the European Member States raises many questions. This is all the more true with regard to that part of the law which, according to the continental European tradition, is called 'private', including, in particular, contract and tort law. How desirable, feasible, or efficient is it to have common or at least harmonized rules in Europe? What are the institutional or practical limits to this process of harmonization and unification? Which areas of law are most in need of common rules? Should those rules entirely replace existing national law, or should they be merely optional – a twenty-eighth legal system, so to speak?

These are the questions dealt with in this book, which has been edited by two of the most prominent German scholars in their field. The eleven papers and six panelist votes were presented by German, Belgian, Spanish, English, Dutch, Polish, and French jurists at the Third European Law Days which took place at Münster, Germany, in summer 2010. Most of the contributors are university professors, and some are members of the Acquis Group.[1]

1 The European Research Group on Existing EC Private Law (Acquis Group) targets a systematic arrangement of existing Community law; for details and activities *see* <www.acquis-group.org/>.

The organizers of the Third European Law Days understand 'European private law' in a broad sense. As Schulze describes it in his inauguration contribution 'Contours of European Private Law', private law in a European context should relate to contracts, torts, family law, and property, but also to commercial law, consumer law, and labour law (p. 25). Taking this broad definition as the point of departure, Schulze gives a – pleasantly short yet detailed – overview of those areas of the law in which an *acquis communautaire* has developed. He emphasizes that, apart from the traditional comparison of different national European laws, the academic discussion should also involve the supranational law of the European Union: "What is significant for the understanding of EU private law is [...] its role in the dualism of national and supranational law" (p. 26).

Gómez and Ganuza examine the economic perspective of the harmonization and unification process in Europe. They reason that the creation of a European Civil Code, which would replace the national codifications, is, economically speaking, less efficient than one might think. According to the authors, the main reason for the lack of economic efficiency is that contract and tort law are highly dependent on context and require open-textured conditions of application, whereas a new European codification would, "with high likelihood, invite a more formalistic [...] application of [its] provisions" (p. 43). However, as Gómez and Ganuza claim, the question of 'whether' European contract and tort law is unified cannot be answered without dealing with the question of 'how' first. The authors point out that factors such as the costs of producing goods and services, on the one hand, and the preferences of the population (physical safety of the product, warranty, information details), on the other hand, must be assessed before the question of whether Europe needs unification, harmonization or a simple coexisting regime of European and national laws can be answered (p. 55).

Another interdisciplinary approach is provided by Reich, who examines the social, political and cultural dimensions of private law within the European Union. Unlike Schulze, Reich understands 'European Private Law' in a narrow sense. His point of departure is the institutional *status quo*: essentially, private law of the EU consists (only) of the Regulations, Directives and ECJ case law regarding consumer and labour law. Taking this narrow definition as a basis (which he labels as 'European Regulatory Private Law'), Reich's detailed analysis suggests a piecemeal and differentiated harmonization: there are certain areas within consumer and labour law that need 'full harmonization' (that is, the member states cannot provide for a higher level of consumer or employee protection) and others that call for minimum harmonization, leaving the member states the possibility to offer more protection (p. 79 *et seq.*, 271-272).

European labour law is dealt with in two more contributions. Seifert explains that the labour law of the EU has been emancipated from a purely economic functionalism and has become a branch of law that gives a "social face to the European integration process" (p. 207). However, at the same time, European social policy has slowed down and given way to new, non-mandatory regulatory approaches. This shift from hard law to soft law leads to less protection of the employees. Schlachter develops this thought further. She proposes a concept that would balance both the employers' interest in flexibility and the employees' interest in

security (so-called flexicurity). The frame of such a concept could be provided by an EU-Directive, which could, additionally, influence non-harmonized national labour laws (p. 224).

European company law is, to some extent, linked to that discussion. Teichmann welcomes the freedom provided in the Statute for the European Company to negotiate on employee participation; but, as he explains, an agreement on the involvement of employees which would breach more rigid national law would most likely not be tolerated (p. 177). Despite the fact that, on this point, national law seems to precede European law, Teichmann emphasizes the advantages of a European Company. In addition, he suggests the creation of European choice-of-law rules which would unify national conflicts rules in this area (p. 176).

Unification of choice-of-law rules within the European Union is more specifically dealt with by Lagarde. He emphasizes that a future unified *code européen de droit international privé* would create the opportunity to align European conflicts rules with those of non-member states in order to avoid conflicts of jurisdiction. At the same time, such a European Code of Choice-of-Law-Rules would be the ideal tool to eliminate unwanted duplications and contradictions, as they exist in the present Regulations.

Schulte-Nölke's approach goes one step further: the goal is not the unification of conflict of laws rules, but rather the creation of unified substantial law within Europe. He suggests a European contract law that parties could choose as the applicable law to their contract. Such Europeanized contract law would not replace the Member States' national laws. However, it would leave parties to a contract the choice of whether they opt for a national law or for the European rules. In a second step, Schulte-Nölke examines the questions of scope and content of such a European contract law. He proposes an instrument for e-commerce contracts which could be opted in regardless of whether one of the parties is a consumer or whether the contract is international or merely national (p. 102 *et seq.*) This proposal, in which von Bar joins (p. 265), has in the meantime been concretized; published as a Proposal for a Regulation on a Common European Sales Law in October 2011, it is currently vividly discussed.

Stuyck and Howells each deal with what a continental European lawyer would describe as 'private law in a broad sense'. Howells welcomes the Unfair Commercial Practices Directive of 2005, but points out that Europe should consider harmonizing its rules in levels of enforcement: whereas the Directive has made a good fist of harmonizing the substantive rules, the differences referring to the likelihood of the infringement being detected and the sanction being imposed may impact on the internal market (p. 142). What is considered problematic by Stuyck is the lack of uniformity regarding the law of competition. Stuyck would favor a holistic concept which would integrate the protection of consumers against unfair trade practices into competition law.

Van Erp focuses on yet another topic, that is, on property law within Europe. He shows that different notions of property and different structures of property rights exist among the European jurisdictions. Van Erp emphasizes the need for a thorough comparative analysis before unification activities can begin, and he suggests a pragmatic and functional approach, as it has been adopted by the ECJ,

rather than "a dogmatic and ideological debate about which legal system is better" (p. 246).

As these short abstracts may have shown, the book is highly commendable. The broad range of topics offers an excellent opportunity to gain a first impression of the current status and the perspective of EU law in central fields of civil law and business law. At the same time, as each of the contributions is rich in details and knowledge, the book is also recommended to experts in those fields.

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C. Busch & H. Schulte-Nölke (Eds.), EU Compendium – Fundamental Rights and Private Law, Sellier European Law Publishers, Munich, 2011, 110 pp., hardback, € 19.00, ISBN 978-3-86653-939-6.

The harmonization of private law is a serious trend in the European Union. Projects such as the *Draft Common Frame of Reference* aim at reaching an overall agreement on a common legal basis. Nevertheless, given the difficulties in conciliating deep cross-border differences, many issues remain contentious. This is where, according to the editors of this book, fundamental rights could come into play and serve as an alternative by providing guidelines for harmonization (p. 23). In this respect, comparative law is an inevitable step and makes a priceless contribution towards identifying the aforementioned differences and providing some tools to find accurate solutions.

To promote the development of a European society based on respect for fundamental rights, the European Legal Studies Institute at the University of Osnabrück (Germany) organized the *Fundamental Rights Action Plan* (FRAP) in 2009. The goal of the FRAP is mainly to respond to the lack of knowledge regarding the influence fundamental rights have on private law in Europe, and to improve knowledge of the interplay between fundamental rights and both civil and commercial litigation. Therefore, the FRAP aims at mapping the law, building a bridge between research and practice, and providing practical tools for judges and legislators (*Preface*, p. xvi).

This book is part of the FRAP initiative. To this extent, it fully befits this initiative by gathering both relevant academic sources and pertinent practical cases from 21 EU Member States.[2]

The first part of the book provides an overview of legal sources, effects and perspectives on fundamental rights in the EU and their influence on private law. Drafted by Christoph Busch, this part introduces the reader to a 'multi-level system of fundamental rights protection' (p. 1). The author briefly explains the interactions among national, European or international sources enshrining fundamental rights, while also providing guidelines on how national courts deal with

2 These comprise Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovenia, Sweden, The Netherlands and the United Kingdom (*Preface*, p. xvii).