

Preface

The emergence of a European private law constitutes one of the most significant developments in the modern legal landscape. From the 1990's private law has been increasingly dominated by European issues. Whereas in the 1980s administrative law, and particularly economic regulatory law, had already been significantly affected by the European integration, the effort to build up the internal market also began to reshape the national private laws of the EU Member States. But Union legislation has predominantly addressed individual policy concerns. To date, an all-encompassing systematic concept for legislation in the area of private law is lacking.

Alongside the legal instruments of the European Union, other lines of development are also leading towards a European private law. First, for more than 100 years the international community of nations has attempted to create uniform regimes through conventions in economically important areas such as intellectual property, the sale of goods, transportation and the provision of financial services. Second, since the time of Helmut Coing, the research of legal historians has excavated the common roots of European private law, thus directing attention at the historical foundations for a new European private law. Finally, since the 1980s comparative law has focused more and more on the issue of private law harmonization in Europe. Ulrich Drobnig, Hein Kötz, Ole Lando and others gave impulses which served as a starting point for the work of the Commission on European Contract Law. That Commission's Principles of European Contract Law, in turn, conceptually similar to the Restatements drafted by the American Law Institute, served as a model for other groups of academics working in the same as well as in adjacent areas of the law. In 2005, the European Commission attempted to consolidate the work of the various groups by initiating the Common Frame of Reference project. This added momentum to the European private law movement.

The various strands of development have led to European private law assuming greater significance as a theme in legal scholarship and, to some extent, even in legal practice. Yet they have not based on any grand systematic design but have followed an haphazard and uneven course. Consumer law, company law, labour law, the law of intellectual property, private international law, international procedural law, competition law, and transportation law are the areas which have witnessed the most significant advances.

Today, the erratic character of the development still presents an obstacle towards systematizing the existing materials. But it is obvious that any meaningful scholarly advance has to be preceded by a thorough exercise of stock-taking. This is demonstrated, for example, by the project of a Common Frame of Reference which is, however, chiefly limited to contract law and neighbouring areas of the law of obligations.

For many years the research interests of the editors of this Encyclopedia have focused on the development of European private law. We are convinced that it is the task of legal scholarship today to comprehend and gather European private law in its entirety to lay a solid foundation for a later systematization. The scholarly permeation of a legal field takes

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place in several phases. Initially, uncoordinated rules are usually formulated as answers to specific social and economic problems which have arisen. In a second phase, the new stock of rules is identified by legal scholarship and becomes the focus of academic debates. With respect to European private law, this second phase has since the 1990s been reflected in the creation of specialized law journals such as the *Zeitschrift für Europäisches Privatrecht*; these journals have become fora for the scholarly discussion of the emerging European private law. A third phase is characterized by the desire to acquire a comprehensive overview resulting, for example, in the publication of collections of source materials.

The present Encyclopedia also belongs to the third phase although it aims at a much more structured examination of the material. It may thus be a harbinger of the fourth phase of the development when the task of systematizing selected areas, and eventually European private law in its entirety, can meaningfully be tackled.

The Encyclopedia contains nearly 500 keyword entries which comprise European private law in panoramic scope. Proceeding from the historical and comparative foundations, the individual entries analyze tendencies towards the international unification and European harmonization of the various fields of private law. Important stages within the development of the national laws also had to be included, as far as they reflect processes of harmonization and reception. The Encyclopedia specifically aims at providing readers with an orientation in areas with which they are not familiar through their own research. Thus, it is designed to serve as an intellectual tie for the emerging discipline of European private law.

Given the interests of its academic staff and the research potential embodied in its library, the Hamburg Max Planck Institute for Comparative and International Private Law was an excellent setting for creating the Encyclopedia. Current and former staff members of the Institute wrote the majority of the entries, and the Institute's infrastructure facilitated the editorial tasks involved in this kind of exercise. We are, however, delighted that also numerous friends of the Institute accepted our invitation to contribute entries to the Encyclopedia.

The Encyclopedia builds on the work done for the *Handwörterbuch des Europäischen Privatrechts* published in 2009. It is, however, more than a translation of its German precursor. While the *Handwörterbuch* was written for German readers, the Encyclopedia is geared towards an international readership; moreover, several entries have been added and all entries have been updated.

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