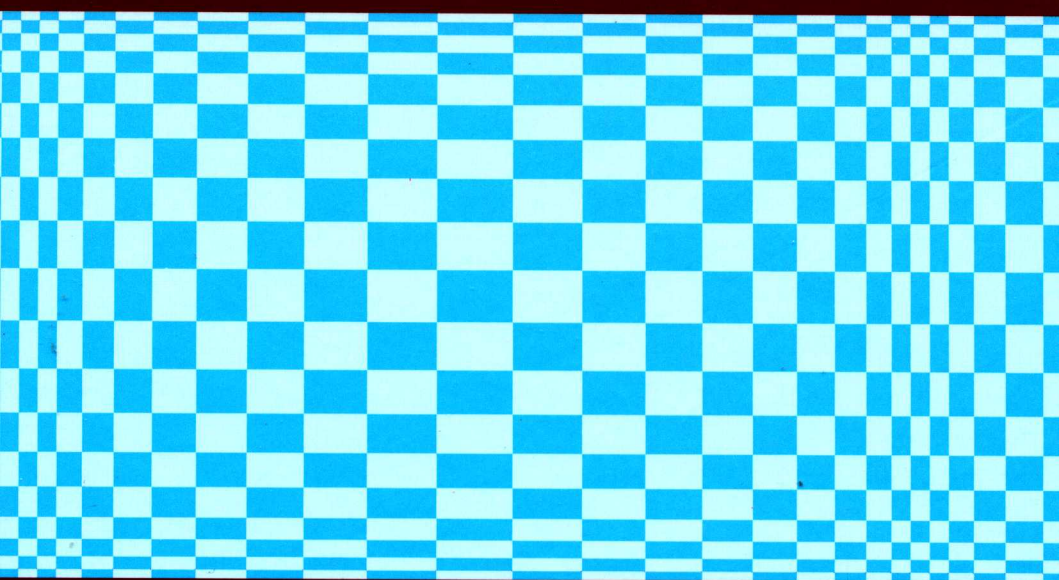


Towards a European Civil Code

Editors

Arthur Hartkamp, Martijn Hesselink, Ewoud Hondius,
Chantal Mak, Edgar du Perron



Fourth Revised and Expanded Edition



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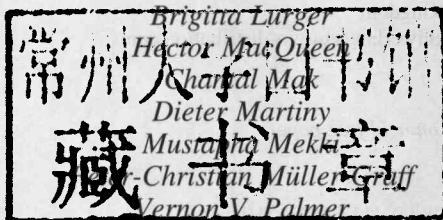
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Towards a European Civil Code

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Preface to the Fourth Edition

Almost twenty years have passed since the initiative was taken for the first edition of *Towards a European Civil Code*. While in the early 1990s the idea of a Code was still beyond the imagination of many scholars, politicians and practitioners, the past two decades have witnessed the development of European private law into an established field of research, teaching, law-making and practice. During this time, the focus of the debate has gradually shifted from the question of the feasibility of further harmonization of private law in Europe to the elaboration of proposals for possible harmonizing instruments. Indeed, with the publication of a Draft Common Frame of Reference (DCFR) for European private law (2009) and the presentation of the Commission's Green Paper on policy options for the further progress of European contract law (July 2010), the enactment of a Code-like measure now seems closer than ever before.

In this fourth edition of *Towards a European Civil Code*, the authors discuss the development of European private law since the publication of the previous edition of the book, paying particular attention to the revision of the *acquis communautaire* and the drafting of a CFR. Most of the existing Chapters have been updated, and new contributions have been included on private regulation; the influence of primary EU law on private law; competition and contract law; proceduralization of private law; the legislative competence of the EU in the field of private law; constitutional aspects of a European Civil Code; the notion of damage; the law and economics of harmonizing European private law; defects of consent in contract law; hardship and modification of the contract; financial services; suretyships by private persons; vicarious liability; liability for land and structures; and good faith acquisition of movables. We thank all authors for their enthusiastic cooperation to this new edition of the book and their valuable contributions to the European private law debate.

Preface to the Fourth Edition

Finally, the majority of the contributions have been concluded at the beginning of 2010. Later developments have been taken into account to a limited extent.

Amsterdam/The Hague, August 2010

Arthur S. Hartkamp
Martijn W. Hesselink
Ewoud H. Hondius
Chantal Mak
C. Edgar du Perron

Almost twenty years have passed since the *Introduction* was taken for the first edition of *European Private Law*. In the early 1990s the idea of a book was still beyond the imagination of many scholars, politicians and practitioners. The past two decades have witnessed the development of European private law into an established field of research, teaching, law-making and practice. During this time the focus of the debate has gradually shifted from the question of the feasibility of a harmonization of private law in Europe to the elaboration of proposals for further harmonizing instruments. Indeed, with the conclusion of a Draft Common Frame of Reference (DCFR) for European private law (2009) and the presentation of the Commission's Green Paper on policy options for the further progress of European contract law (July 2010), the enactment of a Code of the law of the European Union is no longer a distant dream.

In this fourth edition of *European Private Law*, the authors discuss the development of European private law since the publication of the previous edition of the book, paying particular attention to the revision of the *Principles of European Private Law* and the drafting of a CLE. Most of the existing chapters have been updated and new contributions have been included on, for example, the influence of primary EU law on private law, competition and contract law, procedural aspects of private law, the legislative competence of the EU in the field of private law, constitutional aspects of a European Civil Code, the notion of changing the law and economics of harmonizing European private law, effects of contract in contract law, liability and modification of the contract, financial services, surviving by private persons, vicarious liability, liability for land and structures, and good faith acquisition of movables. We thank all authors for their valuable contribution to this new edition of the book and their valuable contributions to the European private law debate.

Abbreviations

ABGB	Allgemeines Bürgerliches Gesetzbuch [Civil Code] (Austria)
AC	The Law Reports (Appeal Cases, House of Lords)
AcP	Archiv für die civilistische Praxis
All ER	The All England Law Reports
AJCL	The American Journal of Comparative Law
AP	<i>Tribunal de Apelación</i> [Court of Appeal] (Spain)
App.	<i>Corte d'Appello</i> [Court of Appeal] (Italy)
Arm.	Armenopoulos miniaia nomiki epitheorisis
Art.	Article
A&V	Aansprakelijkheid en Verzekering
BAG	<i>Bundesarbeitsgericht</i> [Federal Labour Court] (Germany)
BAGS	<i>Entscheidungen des Bundesarbeitsgericht</i> [Decisions of the Federal Labour Court]
BB	Der Betriebs-Berater
BGB	<i>Bürgerliches Gesetzbuch</i> [Civil Code] (Germany)
BG	<i>Bundesgericht</i> [Supreme Court] (Switzerland)
BGE	<i>Entscheidungen des Schweizerischen Bundesgericht</i>
BGHZ	<i>Amtliche Sammlung der Entscheidungen des Bundesgerichtshofes in Zivilsachen</i> [Decisions of the German Federal Court in civil matters]
BolMinJust	<i>Boletim do Ministério da Justiça</i> [Bulletin of the Ministry of Justice] (Portugal)

Abbreviations

Bull.civ.	<i>Bulletin des arrêts de la Cour de Cassation rendus en matière civile</i> [Bulletin of the decisions of the Court of Cassation in civil matters] (France)
BVerfG	<i>Bundesverfassungsgericht</i> [Federal Constitutional Court] (Germany)
BW	<i>Burgerlijk Wetboek</i> [Civil Code] (The Netherlands)
CA	Court of Appeal
CC	Code Civil [Civil Code] (France)
Cass.	<i>Cour de Cassation</i> (France, Belgium); <i>Corte di Cassazione</i>
Cass.ass.plen.	<i>Cour de cassation, Assemblée plénière</i> (France)
Cass.civ.	<i>Cour de cassation, Chambre civile</i> (France)
Cass. crim.	<i>Cour de cassation, Chambre criminelle</i> (France)
Cass. req.	<i>Cour de cassation, Chambre des requêtes</i> (abolished) (France)
Cass.sez.pen.	<i>Corte di Cassazione, sezione penale</i> (Italy)
CESR	Committee of European Securities Regulators
CFI	Court of First Instance
CFR	Common Frame of Reference
CISG	Convention on the International Sale of Goods
CJ	Colectânea de Jurisprudência (Portugal)
CJEU	Court of Justice of the European Union
CLJ	The Cambridge Law Journal
CMLR	Common Market Law Review
DCFR	Draft Common Frame of Reference
D.	Recueil de jurisprudence Dalloz
EC	Treaty establishing the European Community
ECJ	European Court of Justice
EilDik	Elliniki Dikeosini (Greece)
ELJ	European Law Journal
ER	The English Reports
ERCL	European Review of Contract Law
ERPL	European Review of Private Law
EULIS	European Land Register Services
FHPA	Family Home Protection Act
Foro it.	Il Foro italiano: raccolta di giurisprudenza civile, commerciale, penale, amministrativa
Gaz. Pal.	Gazette du Palais
Giur. it.	Giurisprudenza italiana
Giust. civ. Mass.	Giustizia civile. Massimario annotato della cassazione
HD	<i>Højesteretsdom</i> (Denmark); <i>Høyesterettsdom</i> (Norway); <i>Högsta domstolens domar</i> (Sweden, Finland) [Judgment of the Supreme Court]

HL	House of Lords (England)
HR	<i>Hoge Raad</i> [Supreme Court] (Netherlands)
ICLQ	International and Comparative Law Quarterly
ILRM	Irish Law Reports Monthly
IOE	Interim Outline Edition
Int.Bus.Lawyer	International Business Lawyer
IR	The Irish Reports
IRLR	Industrial Relations Law Reports
J.	Judge
JBl	Juristische Blätter
JCP	Juris-Classeur Périodique La semaine juridique
J. de Paix	<i>Justice de Paix</i> (Luxembourg); <i>Justice de Paix</i> [Vrederegerecht] [Justice of the Peace] (Belgium)
JT	Journal des Tribunaux (Brussels)
Jurid.Rev.	The Juridical Review
Ius	Juristische Schulung
JZ	Juristenzeitung
KB	The Law Reports. King's Bench Division
KF	Karlsruher Forum, supplement to VersR
La Ley	Revista jurídica española de doctrina, jurisprudencia y bibliografía
LJ	Lord Justice
Lloyd's Rep.	Lloyd's Law Reports
LM	Lindenmaier-Möhring, Nachschlagwerk des Bundesgerichtshofs
LOA	Estonian Law of Obligations
L.Q.Rev.	Law Quarterly Review
MLR	Modern Law Review
MR	<i>Master of the Rolls</i>
M&W	Meeson and Welsby's Reports, Exchequer
n., n°	number
NJ	Nederlandse jurisprudentie
NJA	Nytt juridiskt arkiv
NJB	Nederlands Juristenblad
NJW	Neue Juristische Wochenschrift
NJW-RR	NJW-Rechtsprechungsreport
no(s).	number(s)
NoB	Nomiko Bima; miniaion nomikon periodikon
OE	Outline Edition
OLD	<i>Østre Landsrets Dom</i> [Judgments of the Eastern High Court] (Denmark)
OGH	<i>Oberster Gerichtshof</i> [Supreme Court] (Austria)
OLG	<i>Oberlandesgericht</i> [Court of Appeal]
p(p).	page(s)
paras	paragraphs

Abbreviations

Pas. Belge	Pasicrisie belge
Pasin. Belge	Pasinomie belge
Pas. luxemb.	Pasicrisie luxembourgeoise
PECL	Principles of European Contract Law
PEL MC	Principles of European Law on Mandate Contracts
PEL SC	Principles of European Law on Service Contracts
PEICL	Principles of European Insurance Contract Law
PETL	Principles of European Tort Law
QB The Law Reports.	Queen's Bench Division
RAJ	Repertorio Aranzadi de Jurisprudencia (Spain)
Rb.	<i>Arrondissementsrechtbank</i> [District Court] (Netherlands)
RC	<i>Relação</i> [Court of Appeal] de Coimbra (Portugal)
RAI	Revue de droit des affaires international
Rep. gen.	Repertorio generate della Giurisprudenza italiana
Resp.civ. et assur	Responsabilité civile et assurances
Rev.dr.int.dr.comp	Revue de droit international et de droit comparé
Rev. int.dr.comp	Revue internationale de droit comparé
Rev.jur.pol.Ind. Coop.	Revue juridique et politique, Indépendance et Coopération
Rev.trim.dr.civ.	Revue trimestrielle de droit civil
RG	<i>Reichsgericht</i> [Supreme Court of the German Reich]
RGAR	Révue générale des assurances et des responsabilités
RGZ	<i>Amtliche Sammlung der Entscheidungen des Reichsgerichtes in Zivilsachen</i> [Decisions of the German Imperial Court in civil matters]
RL	<i>Relação</i> [Court of Appeal] de Lisboa (Portugal)
RP	<i>Relação</i> [Court of Appeal] do Porto (Portugal)
RW	Rechtskundig Weekblad
Sem.Jur.	La Semaine Juridique, Edition Générale
SGA	Sale of Goods Act
SHD	<i>Sø- og Handelsretsdom</i> (Judgement of the Maritime and Commercial Court Copenhagen)
SJT	<i>Svensk Juristtidning</i> (Sweden)
SLT (Rep.)	<i>The Scots Law Times</i>
STJ	<i>Supremo Tribunal de Justiça</i> [Supreme Court] (Portugal)
Sup.Ct.	Supreme Court (Eire)
SZ	<i>Entscheidungen des österreichischen Obersten Gerichtshofs in Zivilsachen</i>
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union