Web Journal of Current Legal Issues

Giokaris, Review of The Cambridge Companion to European Union Private Law
Ed. Christian Twigg-Flesner, [2011] 5 *Web JCLI*
http://webjcli.ncl.ac.uk/2011/issue5/giokaris5.html

The Cambridge Companion to European Union Private Law
Ed. Christian Twigg-Flesner

Cambridge University Press 2010 382 pp.
ISBN 9780521516174, £65.00

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First published in Web Journal of Current Legal Issues

European private law is a new area especially for British lawyers. It encompasses diverse areas such as contract, tort, property, family and others. We should keep in mind that when the European Economic Community was established it had only 6 Member States. Now the European Union has twenty seven Member States and another five candidate countries (Croatia, Former Yugoslav Republic of Macedonia, Iceland, Montenegro, Turkey) still wait for the green light. The book, *The Cambridge Companion to European Union Private Law,* edited by Christian Twigg-Flesner, is a welcome addition to the literature and concentrates on the salient issues.

If we examine this book carefully we can group the main themes under three main headings:

- The EU has undertaken many projects and adopted legislation that might help build a coherent and viable European private law but there are certain limitations that the EU faces legally and politically.
- The legislation of the EU contains many inconsistencies and the projects have huge defects that cannot lead to the uniformity of private law. This group of authors believe that the EU can use other mechanisms to fulfill its ambitions and do not share the opinion that harmonization of certain areas of private law is the only solution.
- Whether the EU manages to harmonize private law or not it would be better to examine other factors that may cause serious problems to the European Union as a whole but also to the Member States individually.

In respect of the first group the authors indicate that the EU and especially the Commission has engaged in useful projects such as the Action Plan on a more coherent contract law, European contract law and the revision of the *aquis* and the draft of the Common Frame of Reference. Specifically Stephen Weatherhill argues that the Commission is on a good path and must continue the effort to harmonize European private law. He also emphasizes that the adopted legislation should not be just a product of political consensus but should serve the interests of the market, businesses and consumers. Some authors (Gerhard Dannemann, Silvia Ferreri, Michele Graziadei) express the opinion that the EU undertook these projects because it has realized that the method of legislative drafting and the terminology should change in order to become more coherent. Furthermore they believe that the adoption of the Common Frame of Reference will improve things in the area of European contract law and the enactment of model rules and set of principles will bring about integration in the EU. Additionally other scholars (Angus Johnston, Hannes Unberath) underline that directives suffer from certain defects so it would be better, in the long run, to achieve uniformity with regulations. Moreover they strongly believe that the CJEU through the interpretation of directives and regulations has helped a lot in the convergence of European Private Law. Likewise Hugh Beale thinks that all of these projects will help the EU to establish a common terminology and the CFR to create model rules, which will reform the directive as a legislative instrument and make them comprehensive and functional. Some authors (Jens Karsten, Paolisa Nebbia, Hans-W. Micklitz, Geraint Howells, Marcus Pilgerstorfer) also suggest that some legislative instruments like travel law conventions, the unfair contract terms directive, the unfair commercial practices directive and the product liability directive are examples of very innovative, coherent and stable legislation and could be used as model rules for the improvement and the enlargement of EU private law.

Moving to the second group of ideas, the authors here believe that the case law of the CJEU shows us that in many circumstances the EU can achieve its goals without harmonization of any area of law. For instance Professor Hans Shulte-Nolke is of the opinion that consumer contract law is scarce and that the Commission has been inconsistent. He also believes that regulations and directives contain a lot of conflicting provisions and that the full harmonization approach that has been adopted by the Commission will confuse the interconnection between European and national law. He recognizes that the Commission tries to improve the existing legislation but in order to achieve this, radical reform is needed. Finally he reaches the conclusion that a combination of a framework directive and an optional instrument would be the best solution. Another author, Giuditta Cordero Moss, concludes that is better to have many choices of law than a substantive law or a European Civil Code. Furthermore, others (Cees Van Dam, Jules Stuyck) argue that in some areas like tort law there is no need for harmonization and if this phenomenon occurred, it would have many costs. In addition the EU, along with Member States, does not have harmonization plans for certain areas of law. Finally the full harmonization approach is controversial because not only can the Member States not implement their own stricter legislation but they will have to change their national laws so as to fit into a European contract law.

Last but not least, as Horatia Muir-Watt points out, even if the EU achieves a great degree of harmonization in most of the areas of private law it must anticipate the conflicts that EU legislation may cause in respect of the law of third countries. Similarly, all these provisions

should be compatible with the European Convention of Human Rights. Finally, she highlights another crucial issue in that many European businesses prefer arbitration as the way to solve their disputes and differences and neglect EU law.

One of the serious problems in the European project is that much of the legislation that the EU institutions adopted was a compromise between Member States and did not take into consideration the needs of the businesses and the market. Now is the time for the EU and especially the Commission to adopt more courageous decisions and legislation and to convince Member States that this change will be for their own benefit. It is true that European directives contain many inconsistencies and the incorporation into the national law is lengthy. Maybe now is the time for the EU, taking a full harmonization approach, to replace most of the directives with regulations to achieve their goals. In addition, the CJEU is a powerful institution because it interprets and clarifies the scope of the directives and regulations. So the main function of the CJEU is to ensure the uniform application of EU law and this can be done through the process of preliminary references. More importantly it can guide the national courts on the interpretation of directives and give clarification where it is needed. One important thing that must be said is that although the Commission has started many projects it would be better to give the legislators and the drafters more time in order to finish these projects and not to impose strict deadlines. I submit that the EU institutions should draw inspiration from projects like the Principles of European Contract Law and Unidroit Principles, from some directives (Unfair Contract Terms Directive, Product Liability Directive) and conventions that have already achieved a great deal of harmonization. The *Cambridge Companion to European Union Private Law* will also be an extremely useful reference point in this process.