

## Editorial

Stefan Grundmann\* and Hugh Collins

# Editorial 20 Years of European Contract Law Review

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Twenty years ago, in the spring of 2005, the European Review of Contract Law (ERCL) published its first issue. The journal was founded on the presumption – and the initial board was of the firm conviction – that contract law in Europe is really developing and evolving as EUROPEAN UNION CONTRACT LAW. Since the turn of the millennium, most of the important policy decisions that affect the laws of contract in Europe have been taken at the level of the European Union. Although the editorial board changed and was expanded and rejuvenated several times, this shared conviction remained the same.

The two editors who have remained on the board since then until today are Hugh Collins, author of *Regulating Contracts* (Oxford University Press, 1999) and Stefan Grundmann, author of *Europäisches Schuldvertragsrecht* (de Gruyter, 1999). Our shared view has always been that European Contract Law was a growing – and increasingly coherent – field of law. Our hope has been that the journal would make a substantial contribution to developing the fragmented European initiatives into a coherent body of law that is fit for modern economies in the twenty-first century.

In addition, we hoped that the journal would also alert scholars to the full range of initiatives from the European Union that affect contract law. Initially the Unfair Contract Terms Directive (1993/13) and, even more so, the Consumer Sales Directive (1999/44) formed the basis for an extensive and coherent body of contract law. It was noticeable that the Sales Directive led to the main contract law reform since its existence in the one of the (two) big Codes, the *Bürgerliches Gesetzbuch* (BGB), with the *Schuldrechtsmodernisierung* 2002, later followed by a similarly deep and unprecedented reform of the French Code Civil (2016), the other “big” Code to which Europe refers. Contract Law has been European since then. In the United Kingdom, which even before Brexit held itself semi-detached from the EU, all the major

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legislative innovations in contract law derived from EU directives, though their source was rarely acknowledged.

In ERCL's 18th year, the Unfair Contract Terms Directive celebrated its 30th anniversary. That directive to which most CJEU case law is addressed and which is as well paramount in substance, noticeably with its development of a Fundamental Rights perspective on European Contract Law (as in the *Aziz* case) and as a basis for a whole new branch of law, European Restitution Law. We addressed this Directive for this birthday with the Special Issue 2023/4. Contract Law has been European and dynamic since the beginning of the 21st Century.

The journal, since its beginnings, had a broad understanding of the scope European Contract Law, both with respect to territorial reach and with respect to substantive matters (see already our Editorial in 2005). 'European' could mean comparative law, EU Law or Member State law relevant for Europe as a whole, international developments, interplay between different levels or EU Law measure in the narrow sense. Whatever related substantially to the broad lines of development of contract law in Europe with a focus on the old continent and the EU, would be regarded as relevant to ERCL. With respect to substantive topics, the most important criterion was that the legal issue related to the making of contracts. This could be classical rules on contract formation or remedies for breach of contract, termination or pre-contractual duties. This could as well be public good regulation impacting on the making of contracts, the interplay between the individual and the public sphere. This could as well relate to private party created sets of rules or principles which are practiced Europe- or even world-wide. This could as well be any theoretical approach underpinning all this legal material, or an outlook into transnational solutions. Sometimes, this could as well relate to the procedural surroundings. Always, a particular emphasis was on the cutting-edge developments, often with Special Issues, for instance very early on, still before the first directives, on the theme of European Contract Law and Digitalization.

In the years after 2005, the journal became the marketplace for the discussion of contract law in Europe in this large sense. Without any claim to completeness, we can mention: the interplay between market fairness rules ('unfair competition') with contract law, which became so prominent with the Unfair Commercial Practices Directive around the founding years of the journal; then the heated discussion about an Optional European Contract Law Code, proposed as the so-called Common European Sales Law (CESL) in the years of the world financial crisis, a discussion triggered by the Commission's Green Paper of 7/2001 on the Future of European Contract Law and discussed since then (eventually, however, unsuccessful); the law relating to the worldwide financial crisis, the robustness of the financial system and private law repercussions; the discussion about a Consumer Rights Directive, with Full Harmonization as a new concept entering the scene, but in the course of

negotiations reduced to a measure on marketing forms mainly (distance and door-step marketing, also e-commerce); then the whole mega-area of digitalization, with the Directives on digital contents and the reform of sales law (2019/770 and/771), but as well the whole major compound of regulations relating to digital markets, including the Digital Markets, the Digital Services and the AI Acts – on which a Special Issue is to be announced (again) for next year. Finally, also the mega-theme of sustainability plays out substantially for contract law, again a Special Issue is planned, for end of 2025 or for 2026.

Indeed, the European Review of Contract Law wants to remain as well for the next 20 years the marketplace for the discussion of what – from a policy perspective and with respect to the big developments – would seem to constitute the key-level for the evolution of contract law in the whole of Europe. *Ad multos annos.*

On behalf of the editorial board.

Hugh Collins and Stefan Grundmann, March 2025.