

Newsletter, January 2011

Dear friends,

We would like to inform you about some on-going activities with regard to EuSoCo in 2011.

IACL Conference on Consumer Law

The next Conference of the International Association for Consumer Law (IACL) will be held in London on June 27-29, 2011. Many of us will be present. We have asked for a panel to present the EuSoCo issue.

10/01/2011: is the deadline for Submissions of papers (www.iaclaw.org/ or www.responsible-credit.net/index.php?id=2921). A background paper for this conference and the discussion within the initiative on EuSoCo is available at <http://eusoco.com/?cat=3> (still only in German).

As a reminder, for those of you who are not yet IACL members, membership of the IACL is free and you can simply sign up to the list serve at: <http://listserv.manchester.ac.uk/cgi-bin/wa?SUBED1=law-iacl&A=1>

DCFR-Process

31.01.2011: EuSoCo group's formal response to the EC Green Paper on contract law will have to be submitted before the end of the consultation period (see: <http://eusoco.com/?p=570>, deadline for responses is 31 January 2011. Formally, answers should be to the [Green Paper from the Commission on policy options for progress towards a European Contract Law for consumers and businesses](#) itself.

The Commission paper essentially asks two questions:

1. Legal nature of the instrument? (*choices:* Scientific paper, toolbox (inter-institutional or Commission), EU-Recommendation, optional instrument, Directive, Regulation on European Contract Law);

2. Scope? (*choices:* b2b and/or b2c?; cross-border and/or domestic; general part and/or specific parts; service contracts?; "legal contracts" (torts, undue enrichment, benevolent).

Should we answer that "with regard to the insufficient scientific, social and democratic basis of the draft we could only imagine Option 1: *Publication of the results of the Expert Group*"?

Since the assumptions made in the Commission's Green Paper reflect the neo-liberal standpoint that "consumers" in Europe need legal uniformity and benefit from any extension of markets without regard to the historic developments in law framing and taming market powers, may not be shared by most of us, the questions put to the public are quite arrogant and pre-defined.

My proposition would be for us to draft a letter stating that we have serious doubts that the assumptions made by the Commission for the drafting of the DCFR are truly shared by the democratically elected bodies in the EU and the Member States and that we especially miss "(social) justice" and concern for work, housing and consumption in such an important enterprise. We would therefore be astonished if such a paper were to be published in any form other than as a mere opinion of an expert group selected by an administration.

EuSoCo Meetings

We annex (see p.5) the minutes of the last meeting we held in summer 2010. One of our options for the next meeting was Santiago de Compostella in May 2011. However, I fear we may not be able to find the necessary resources. Since Elena Perez-Carillo will be in Hamburg next week, we can talk about this and maybe find a date in autumn 2011 that is more suitable and realistic. We can instead offer once again to link our meeting with the 2011 international ECRC conference in Hamburg, Germany on 19-20 May 2011 where we could again meet the day before this event, on **18 May 2011**. We would have good prospects to cover the expenses through a grant via the Italy-Germany research programme set up to support such conferences (provided the location of the meeting is in either of these 2 countries). We will try to get the money for travel and overhead costs, and feel that this combination of EuSoCo meeting and ECRC conference is beneficial to both forums - our meeting by using the facilities and the frame programme, and the ECRC by providing experts for panels of general interest.

I therefore would kindly ask you to reserve this date for your coming to Hamburg.

Further Work

We are certainly late in implementing what we decided last year. But with regard to the enormous importance the development of European Contract Law has for the future of our culture we do not mourn the slow pace which our work has taken during the last six years. After 5000 years of legal development, the efforts of a handful of public servants in Brussels and law professors in Germany are presently designing our legal future, and we would have appreciated if our rulers had taken a bit more time to integrate the efforts of others, which in particular the Trento project has done. In the meantime, Luisa

Antoniolli has published her book on the DCFR in the same series as the DCFR itself and got a lot of recognition for a critical attitude for which we had the opportunity to contribute the special aspect of social contracts in labour, tenancy and consumer credit law.

Memorandum of Understanding

In past meetings, we agreed that we should publish a Memorandum of Understanding for the EuSoCo group. A draft has been circulated in German (see Annex 1 on p.3) alongside a very rough English version. I would ask one of our English participants (Geraint?) to transform these one and a half pages into readable English, and ask for translations into French (Emmanuel?), Italian (Luca?) and Spanish (Elena?) versions.

Book on Social Contracts in Europe

Since the iff has recently developed a system of producing low cost hard cover books which meet general standards, the core question is therefore whether we could get contributions for this book for our session in May 2011. It could be composed of very short contributions. These should treat either one of the three legal areas or theoretical aspects of social long-term contracts, common feature like early termination, price regulation, collective aspects etc. or provide a critique to the commercial sales orientation in the DCFR or national codes. The book should be able to stimulate a European discussion at a time when the Brussels initiative will publish its final version of a CFR. We could learn from the social justice paper which remained so vast that even the DCFR could get absolution under its label at the European Parliament.

Annex 1: EuSoCo Declaration (Draft)

Deutsch

¹Die Verfasser dieser Erklärung, Verbraucher-, Miet- und Arbeitsrechtler sowie Vertreter des allgemeinen Vertragsrechts sind tief besorgt, dass der Weg zu einem einheitlichen europäischen Vertragsrecht, wie ihn Europäische Kommission und Parlament eingeschlagen haben, auf einem verengten Kaufrechtsmodell aufbaut, demzufolge die Vertragspartner allein Informationen zum Ausgleich rechtlicher Benachteiligung erhalten können. ²Ökonomische und soziale Interessen der Arbeitnehmer, Verbraucher und Mieter in Langzeitverträgen haben dagegen bisher weder im Allgemeinen Teil der Vertragsrechtsentwürfe noch bei den besonderen Vertragsverhältnissen und auch nicht in der Auswahl der Experten adäquate Berücksichtigung erfahren. ³Gleichwohl wird das Ziel eines das nationale Recht auskonkurrierenden 28ten Regimes alle die Bereiche des Zivilrechts nachhaltig bestimmen, in die in der heutigen Dienstleistungs- und Kreditgesellschaft faktisch Arbeit, Konsum und Wohnen ohne den Schutz der traditionellen Rechtsmaterien abgedrängt worden ist.

⁴Das Modell des Zeit indifferenten Kaufvertrages muss um ein zweites grundlegendes Modell ergänzt werden, das wir als Lebenszeitvertrag bezeichnet haben. ⁵Es soll soziale Gerechtigkeit für die Menschen ausdrücken können, für die ökonomische Effizienz im Sinne von Profitabilität nur ein Mittel ist. ⁶Es sollte Antworten für Veränderungen in der Lebenssituation bereithalten und mehr als eine einfache Tauschgerechtigkeit bieten. ⁷Materieller Schutz für soziale Schwäche neben der Information für die Auswahl auf dem Markt gehört dazu ebenso wie eine kollektive und soziale Dimension von Arbeit und Konsum, wie sie in Tarifverträgen aber auch in allgemeinen Prinzipien enthalten sind.

English

¹We, a group of academics knowledgeable in consumer, tenancy and labour law, are deeply concerned that the path to a harmonised European system of contract law as envisaged by the European Commission and the Parliament will be built on a reductive model of commercial and consumer sales where information is the only substantive gift to social interests. ²Economic and social rights of workers, consumers and tenants in long-term relations have instead found no adequate place, neither in the general principles nor in the specific parts of the existing drafts nor in the composition of the mandated expertise. ³Its legal outcome, a European contract law as a 28th regime, will anyhow deeply affect those areas in the modern service and credit society where labour, consumption and housing is increasingly dealt with outside the shelter of the traditional labour or tenancy law and debtor's protection realm.

⁴The liberal sales model of information indifferent to lifetime provides no sufficient protection for the weak and no regard for the productivity of those who work for their living. Commercial sales contracts need to be completed by a second model based on what we call lifetime contracts. ⁵It should provide social justice related to human needs and lifetime to which economic efficiency in the pure sense of profitability can only be a means. ⁶It should be able to cope with long-term relational problems of changes in human lives instead of providing only remedies typical for spot contracts. ⁷It should provide a substantive shelter for the weak instead of information for choice only, it should acknowledge the collective and social dimension of labour and consumption expressed in collective agreements and declarations of principles.

⁸Die Vertragsfreiheit der Anbieter und Arbeitgeber sollte um die Anerkennung sozialer Freiheit der Arbeitnehmer, Mieter und Verbraucher ergänzt werden, in der die drei großen Bedrohungen unserer Zeit: Arbeitslosigkeit, Überschuldung und Obdachlosigkeit ernst genommen werden.

⁹Wir werden international in den drei offiziellen EU-Sprachen zusammen arbeiten, um den Schatz nationaler Kulturen im Arbeits- und Privatrecht sichtbar zu machen. ¹⁰Dabei werden wir die grundlegenden Vertragsformen, Prinzipien, gemeinsamen Ansätze und rechtlichen Errungenschaften im gegenwärtigen wie auch im historischen sozialen Vertragsrecht erforschen. ¹¹Unsere Ergebnisse wollen wir entweder als Ergänzung oder als Alternative zum bestehenden Projekt eines Europäischen Vertragsrecht 2013 einbringen. ¹²Dabei wollen wir nicht nur Gewerkschaften, Verbraucherverbänden und anderen Vertretern der Zivilgesellschaft sondern auch den offiziellen Stellen in der Gesetzgebung und anderswo, die mit der Erarbeitung betraut sind (z.B. <http://www.finance-watch.org>), unsere Hilfe anbieten, wenn sie mit uns der Meinung sind, dass die Akzeptanz eines zukünftigen Europas nur dann erreicht werden kann, wenn der Verlust an nationaler Autonomie durch ein wirklich soziales Europa kompensiert wird, das sich auch im Recht auf die sozialen Traditionen und Erfahrungen stützt.

⁸The contractual freedom of suppliers and employers in the traditional sales based contract model should be complemented with the freedom of social interests to be sheltered from the three perils of our time: unemployment, overindebtedness and homelessness.

⁹We shall work together internationally, make use of all three official EU languages and incorporate the treasure of national legal cultures in labour and private law. ¹⁰This will be done in order to study the basic contractual forms, principles, common approaches and achievements in the existing as well as the historical national social contract law. ¹¹The results will be offered to the existing EU project on a Common Frame of Reference for a European Contract Law in 2013. We offer our professional support not only to trade unions, consumer organisations, tenant organisations and community groups in the civil society. ¹²We would like to support also those officials involved in the legislative processes (see <http://www.finance-watch.org>) who believe that only a social Europe will compensate for the loss of national autonomy and who hold that a social Europe needs social law based on democratic experience in its Member States.

Annex 2: Minutes of the Meeting in Hamburg 01/07/10 (pm)

There was substantial discussion of the similarities and difference between employment law and consumer credit law. A working agenda was developed based on the following characteristics:

Employment contract

1. *Personality*
2. *Mandatory rules/not merely information*
3. *Adaptation over time*
4. *Collective procedures/representation*
5. *Minimum value, wage/comparative rate*
6. *With regard to the person e.g. effects of illness, pregnancy on contract*
7. *Termination/prolongation*
8. *No retroactive dissolution*
9. *Possibility of information sharing.*

Consumer Credit Law

1. *Creditworthiness/responsible lending*
2. *Mandatory rules*
3. *Bargaining structure/social force majeure/ability to adjust*
4. *Collective mechanisms: Consumer Zentral, Ombuds, Class Actions*
5. *Usury/rate ceilings*
6. *Social force majeure/insolvency law?*
7. *Time restrictions, minimum two instalments*
8. *No*
9. *Information sharing*

To Dos

There was discussion as to whether there should be vertical or horizontal reports on the issues raised under consumer credit and employment contracts.

ToniW showed interest in topics 1/9. Nick H indicated an interest in working with a colleague at Rotterdam comparing all the issues. LuisaA wished to pursue the relationship of European and National law, the harmonization and disintegration in labour and consumer credit law; LucaN adaptation and adjustment (3) and IainR price control and minimum wage(5). UdoR would work on theoretical concepts of lifetime contracts.

A possible meeting in Santiago was suggested for the end of March 2011. It was also recommended that there should be outreach to Union/consumer groups e.g. BEUC and Monique Goyens. It was also important to attract contributors from new member states.