

<p>Hamburg Programme: Wednesday 18th May 2011 (EuSoCo Group 3rd Meeting) Venue: Room 217, Welckerstraße 8 - 20354 Hamburg - Universität Hamburg, Fakultät Wirtschafts- und Sozialwissenschaften, Fachbereich Sozialökonomie</p>			
08:30	Welcome & Coffee/ Benvenuti, Caffè Representatives University of Hamburg and Trento and iff		
09:00	<p>Plenary P1: General Contract Law</p> <ul style="list-style-type: none"> - Historic Contributions of Labour Law to General Civil Law: A lost dimension? Luca Nogler (University of Trento) - Ronald Coase and the Chicago School : How welfare economics lost out and how the anti-social disease spread in Europe Maurice Tancelin (em Université de Laval Canada) - Principles and Dimensions of Social Longterm Contracts Udo Reifner (Uni Hamburg) 		
10:15	<p>Plenary Discussion P2: PECL, DCFR, CFR and beyond</p> <ul style="list-style-type: none"> - Introduction I: Is the CFR sales law approach still sufficient for Europe Luisa Antonioli (Uni Trento, PECL); - Introduction II: Where are we with the CFR? Bob Schmitz (EU-CFR Committee) - Overview of consultation responses on EC Green Paper on ECL policy options 		
11:00	Pause/ La Pausa		
11:15	<p>Parallel Sessions: Time and Human Dimension in:</p> <table border="0"> <tr> <td> <p>1.1 Labour Law Moderation: Luca Nogler (Uni Trento); Florian Rödl (Uni Frankfurt/Main)</p> </td> <td> <p>1.2 Consumer Credit and Tenancy Law Moderation: Udo Reifner (Uni Hamburg); Christoph Schmid (ZERP Bremen); Elena Bargelli (Uni Pisa); Geraint Howells (Uni Manchester)</p> </td> </tr> </table>	<p>1.1 Labour Law Moderation: Luca Nogler (Uni Trento); Florian Rödl (Uni Frankfurt/Main)</p>	<p>1.2 Consumer Credit and Tenancy Law Moderation: Udo Reifner (Uni Hamburg); Christoph Schmid (ZERP Bremen); Elena Bargelli (Uni Pisa); Geraint Howells (Uni Manchester)</p>
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13:00	Buffet/ Pranzo		
14:00	<p>Plenary Discussion P3: Interdisciplinary Critique of Contract Law – Statements with discussions</p> <ul style="list-style-type: none"> - (Terminology: lifetime/Long-term/perpetual/Social/lasting/?) - Longterm agreements in economic contract theory (NN) - Perpetual (dauernde) Contracts: Gierke's Critique of the BGB (NN) - Consumer Protection "Providing social protection for long term contracts through consumer law rather than the general law - the case of consumer credit in the UK" (Geraint Howells) - Ethics: The Ethics of Long-term contracts (Andrea Nicolussi) - First necessity – Privatisation and basic needs (Frey Nybergh) - Social Justice (group) (Wilhelmsson/Hesselink/Rutgers) * - Roman Law: the lost dimension of locatio conductio? (Grossi) (contribution to book) - Needs & Care: Sen versus Coase? (Brigitta Lurger) (contribution to book) 		
16:00	Pause/ La Pausa		
16:15	<p>Parallel Sessions:</p> <p>General Principles of Social Long Term Contracts in selected Problems Use Principles to formulate concrete articles</p> <table border="0"> <tr> <td> <p>2.1 Early Termination/Adaptation Moderation:</p> </td> <td> <p>2.2 Pricing/Access Moderation: Geraint Howells</p> </td> </tr> </table>	<p>2.1 Early Termination/Adaptation Moderation:</p>	<p>2.2 Pricing/Access Moderation: Geraint Howells</p>
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18:00	Pause/ La Pausa		
18:15	<p>Plenum P3 / Terza sessione plenaria Conclusion</p> <p>Principles?</p> <ul style="list-style-type: none"> - Which?; Where? National, EU, International; By whom? Soc. Org. ECJ, Parliament; How? CFR, Social Charta, ECJ, EU-Directive, UN? <p>Ideas</p> <ul style="list-style-type: none"> - Involving Social Policy, economic research, wider implications <p>Organisation</p> <ul style="list-style-type: none"> - Book on the "Social Dimensions of European Contract Law" Timetable, TOC, editors; Communication: www.eusoco.com; Next meeting <p>EuSoCo participation in EC process/financing of research</p> <ul style="list-style-type: none"> - National sources; DG Research (FP7); European Parliament request for Commission DG JUST research; 		
19:00	End of Sessions/ Fine delle sessioni		
20:00	Evening Reception (at Jolie Restaurant, Clemens-Schultz-Straße 42)		

Life Time Contracts

Dimensions	Employment	Loan	Rent
1. Personal Life & Time	<i>Personality</i>	<i>Creditworthiness/ responsible lending</i>	<i>Dignity, Living Conditions, Family</i>
2. Freedom of Contract	<i>Mandatory rules/not merely information</i>	<i>Mandatory rules+information</i>	<i>Mandatory rules</i>
3. Family Children	<i>Adaptation over time</i>	<i>Bargaining structure/social force majeure/ability to adjust</i>	<i>Subcontracting, Exchange, Social Housing</i>
4. Individual Collective	<i>Collective procedures/representation /trade unions</i>	<i>Collective mechanisms: Consumer Zentral, Ombuds, Class Actions</i>	<i>State Housing Admin. / Tenants Associations</i>
5. Price	<i>Minimum value, wage/comparative rate</i>	<i>Usury/rate ceilings</i>	<i>Market average rent/usury</i>
6. Social Mishaps	<i>Effects of illness, pregnancy, youth, unemployment</i>	<i>Social force majeure/insolvency law? Overindebtedness</i>	<i>Social Hardship, Grace Periods, Homelessness</i>
7. Default	<i>Termination/ prolongation</i>	<i>Time restrictions, minimum two instalments</i>	<i>Qualified Default, Right to make payments</i>
8. Continuity	<i>No retroactive dissolution</i>	<i>No retroactive dissolution</i>	<i>No retroactive dissolution</i>
9. Markets Information	<i>Possibility of information sharing.</i>	<i>Information sharing</i>	<i>No Information sharing</i>
10. Access first necessity	<i>Labour Agencies, equal access,</i>	<i>Minimum Bank Account, Equal Credit Opportunities</i>	<i>Housing Agencies, decent housing provisions, non-discrimination</i>

Meeting participants

Name	First Name	Institution	Legal Area
Antoniolli	Luisa	Università degli Studi di Trento	Credit/Contracts
Arbour	Marie-Eve	Université Laval	Contracts
Bargelli	Elena	University of Pisa	Contracts/Tenancy
Howells	Geraint	The University of Manchester	Consumer
Leone	Candida	Tilburg University	Consumer/Labour
Nogler	Luca	Università degli Studi di Trento	Labour
Nybergh	Frey	University of Helsinki	Contracts
Pantano	Fabio	Università di Parma	Labour
Perez Carrillo	Elena	Universidade De Santiago de Compostela	Contracts
Pilgerstorfer	Marcus	Old Square Law firm	Labour
Razzolini	Orsola	Università Bocconi	Labour
Reifner	Udo	iff Institut für Finanzdienstleistungen e.V.	Credit
Rödl	Florian	Universität Frankfurt	Labour
Schmid	Christoph	Zentrum für Europäische Rechtspolitik Bremen (ZERP)	Tenancy
Schmitz	Bob	ULC (and EU CFR Committee)	Consumer
Tancelin	Maurice	Université Laval	Contracts
Williams	Toni	University of Kent	Consumer
Brzezicha	Helena	Universität Hamburg (economics)	Organisation
Clerc-Renaud	Sebastien	Iff (economics)	Organisation

Participants unable to attend the meeting but contributing to the book: Prof. Brigitta Lurger (Institut für Zivilrecht, Ausländisches und IPR); Prof. Grossi; Martine Le Friant (Université d'Avignon et des Pays de Vaucluse); Prof. Eva Kocher (Europa-Universität Viadrina); Andrea Nicolussi (Università Cattolica del Sacro Cuore Milano) and others...

EuSoCo Declaration 2010

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. ²**Economic 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.

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, over-indebtedness 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 also support those officials involved in the **legislative processes** (see 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.

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¹ This Declaration has been agreed by the European Social Contract Law Group. The EuSoCo Group was formed in 2005 to promote the

social aspects of EU contract law. It is an expert group set up as an initiative from within the European Coalition for Responsible Credit. Information on the work of the Group is available from the working blog: <http://eusoco.com>. This Declaration is available in English, German and Spanish.

The book project

Table of Contents for the Publication on the “Social Dimensions of European Contract Law”:

Social Long-term Contracts in European Law

[The present table of contents outlines the possible contents of a joint book based on the contributions of the participants in the EuSoCo Project as of May 2011. In order to be able to produce a book with sufficient depth we propose a short book in English without footnotes summarising the essays which are contributed in the three official EU-languages in a second book which leaves enough space for scientific discussion. While the small book should provide a certain effect on political and scientific discussions (comparable to the Manifesto or the DCFR) the second volume should encourage further research and serve as a basis to develop a long-term research project.]

1 Introduction

Social long-term contracts – the challenge of the 21st century (Nogler/Reifner)

2 Labour, Housing and Consumption in General Obligation and Contract Law

- The lost dimension: labour, consumption and housing NN
- Ronald Coase and the Chicago School : How welfare economics lost out and how the anti-social disease spread in Europe (Maurice Tancelin, em Université de Laval Canada)
- The historical Critique of European Contract Law (BGB, Code Civil, ABGB) (Menger, Sinzheimer, Mengoni, Duguit ...) NN

3 Historic Contributions of Labour, Housing and Consumption Law to General Civil Law

3.1 Labour Law

- Historic Contributions of Labour Law to General Civil Law (Luca Nogler, University of Trento)
- Autonomy and Freedom in Labour Law (Eva Kocher, University of Frankfurt/Oder)
- Self-employment (Orsola Razzolini, University Bocconi)
- Riccardo Salomone (Uni Trento), (Fabio Pantano, University Parma)
- Florian Rödl (University of Frankfurt/Main)

3.2

- Providing social protection for long term contracts through consumer law rather than the general law - the case of consumer credit in the UK (Geraint Howells, University of Manchester)
- Debtor’s Protection – A general task of Contract Law, Insolvency law or consumer credit law (Iain Ramsay, University of Kent)
- Consumer Credit Legislation in Europe – A Model for the CFR? (Elena Perez-Carilló)

3.3

- European Interference in Tenancy Law (Christoph Schmid, ZERP University of Bremen)
- (Elena Bargelli, University of Pisa);
- (Peter Derleder, University of Bremen)*

4 Social Long-term Contracts: theoretical approaches

4.1

- The search for the fourth dimension: Lifetime, long-term, perpetual or social? NN
- Longterm and Relational Contracts versus Spot Contracts - What is the difference in economic contract theory (NN)
- Perpetual (dauernde) Contracts: Gierke's Critique of the BGB (NN)

4.2

- The ethics of Long-term contracts (Andrea Nicolussi, Catholic University of Milan)
- Needs and Care in contract law (Brigitta Lurger, University of Graz)
- Services of first necessity in general contract law (Frey Nybergh, University of Helsinki)

4.3

- Social Justice and Social Force Majeure as Principles of Social Contracts in Europe (Wilhelmsson)*
- Locatio conductio a Lungo Terme - Productive Use of Human Capital in Roman Law (Grossi*)
- In search of the definition of Social Long-term Contracts (Andrea Nicolussi. Catholic University of Milan)

5 Legal Answers to common problems in social contract law

- Poverty: Unemployment, Overindebtedness and Homelessness (NN, NN, NN)
- Early Termination (NN, NN, NN)
- Illness, divorce, accidents and loss of income - adaptation to changes circumstances (NN, NN, NN)
- Safe income: Minimum wages, usury ceilings and rent limits (NN, NN, NN)

6 A Unified European Contract Code without workers, consumers and tenants? (CFR)

- Where are we with the CFR? Bob Schmitz (EU-CFR Committee)
- Civil Code, 28th Regime, Model Code or Scientific Contribution - What are the Responses to the Commission's Public Hearing on the CFR? (report by iff)
- Code de la consommation – code de travail – code civil – Where is the difference?
- Is the CFR sales law approach still sufficient for Europe Luisa Antonioli (Uni Trento, PECL)

7 Principles of European Social Contract Law

- Principles (for examples see below)
- Model Rules

Prinzipien Sozialer Dauerschuldverhältnisse

1. **Soziale Nutzungsverträge:** Soziale Nutzungsverträge sind aus Mietverhältnissen abgeleitete Dauerschuldverhältnisse, die für einen Teil der Lebenszeit natürlicher Personen lebenswichtige Güter, Dienstleistungen und Einkommensmöglichkeiten bereitstellen.

2. **Soziale Rücksichtnahme:** Die Bereitstellung von Nutzungsmöglichkeiten für Verbraucher und Arbeitnehmer erfordert soziale Rücksichtnahme. Das Gesetz kann nach Art, Dauer und nach dem Grad der Bedeutung einer Nutzung für die Lebensverhältnisse der Betroffenen verschiedene Stufen der Rücksichtnahme und damit der Anwendbarkeit dieser Grundsätze einräumen

3. **Produktive Nutzung:** Wer die Nutzung bereitstellt hat alles zu unterlassen, was deren sozialen Zweck gefährdet.

4. **Kollektivität:** Arbeitnehmer und Verbraucher können verlangen, dass kollektive Systeme zu ihrer Interessenwahrung ebenso wie kollektive Wertsysteme von Treu und Glauben sowie den guten Sitten in den Prozessen von Abschluss, Gestaltung und Auflösung sozialer Dauerschuldverhältnisse Eingang und Berücksichtigung finden.

5. **Zugang:** Wer soziale Nutzungsverträge bereitstellt muss in Ankündigung, Vorbereitung und Abschluss sowohl bei der Definition der Gruppe, für die diese Nutzung bereitgestellt wird, wie auch innerhalb der Gruppe jede Diskriminierung nach persönlichen wie sozialen Merkmalen unterlassen..

6. **Anpassung:** Haben sich die sozialen und wirtschaftlichen Umstände, die die Grundlage des Vertrags bilden, nach Vertragsschluss schwerwiegend verändert oder stellen sich wesentliche Umstände, die zur Grundlage des Vertrags geworden sind, sich als falsch heraus und hätten die Parteien den Vertrag nicht oder mit anderem Inhalt schließen müssen, wenn sie diese Veränderung vorausgesehen hätten, so kann Anpassung des Vertrags verlangt werden, soweit einem Teil unter Berücksichtigung aller Umstände des Einzelfalls, insbesondere der vertraglichen oder gesetzlichen Risikoverteilung und seines sozialen Zwecks, das Festhalten am unveränderten Vertrag nicht zugemutet werden kann.

Principles of Social Long-term Contracts - Preliminary Ideasⁱ

1. **Social long term contracts:** Social long-term contracts are historically based on long-term rent agreements in which legal form essential goods, services and income opportunities have been provided for certain periods of lifetime.

2 **Needs and Regard:** The provision of goods and services of first necessity for consumption and labour requires social regard. The law can determine the degree of protection of social interest with regard to nature, duration and importance for the lives of persons affected.

3. **Productive use:** The provider of the use has to refrain from all activities jeopardising the productive use of the income or services governed by the agreement.

4. **Collective Dimension:** In labour and consumption natural persons can reasonably expect that the collective aspect of their individual interest is safeguarded by mechanism of collective representation as well as general values of good morals and good faith which influence access, conclusion, contents, adaptation and dissolution of social long-term contracts.

5. **Discrimination:** Those who provide social contracts must refrain from any discrimination as to personal and social characteristics in all states of the contractual relation from access to termination.

6. **Adaptation:** If social and economic circumstances which define the nature of a social long-term obligation have significantly changed since the contract was entered or if material conceptions that have become the basis of the contract are found to be incorrect so that the social nature of the contract is jeopardized and if the parties would not have entered into the contract or would have entered into it with different contents if they had foreseen this change, adaptation of the contract may be demanded to the extent that, taking account of all the circumstances of the specific case, in particular the contractual or statutory distribution of risk, one of the parties cannot reasonably be expected to uphold the contract without alteration.

7. Kündigung: Die Kündigung sozialer Nutzungsverträge gegenüber Verbrauchern und Arbeitnehmern muss transparent, nachvollziehbar und sozial verträglich gestaltet sein. Sie ist ultima ratio. Sie muss die wahren und angemessenen Gründe nennen und diskriminierungsfrei erfolgen. Sie soll sich nur an Gründen in der Person oder im Verhalten des Nutzenden sowie der Wirtschaftlichkeit der Bereitstellung für den Anbieter orientieren. Bei wirtschaftlichen Gründen sind kollektive Mechanismen des Interessenausgleichs zu suchen. Es ist Gelegenheit und Zeit für Vorschläge zur Vermeidung von Kündigung und/oder Kündigungsfolgen zu schaffen.

8. Begrenzte Gattungsschuld: Soweit soziale Nutzungsverhältnisse regelmäßige Einkommen verschaffen, diese zeitlich und örtlich verfügbar machen oder sich auf Zahlungen aus solchem Einkommen beziehen, ist zu gewährleisten, dass das für die Sicherung des Existenzminimums notwendige Einkommen nicht geschmälert wird.

9. Soziale Not: Die durch Arbeitslosigkeit, Obdachlosigkeit und Überschuldung bedingten sozialen Risiken müssen in der individuellen wie kollektiven Gestaltung der Nutzungsverträge angemessen berücksichtigt werden.

7. Termination: Termination of social contracts imposed on workers and consumers must be designed in such a way as to be transparent, accountable and socially responsible. Early termination against the will of the consumer or worker should be only a last resort. The true and fair reasons should be disclosed in due time before the measures become effective. They should be based solely on such significant personal behaviour, circumstances or economic interest of the supply side which concern the future well-functioning of the supply. For economic termination collective redress mechanisms can be invoked by the user.

8. Limited debt: Where social contracts provide regular income, or refer to payments from such income, these sources should be used so that minimum income levels are upheld.

9. Exclusion: Situations of unemployment, homelessness and overindebtedness must be taken into account in the individual as well as collective contents of the parties' agreement.

ⁱ This text represents some ideas outlined in Reifner, Die Ent-täuschungen des Zivilrechts, (The Deceptions of Civil Law) (Hamburg 2011) see www.eusoco.com.