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The Significance of the Principles of European Contract Law

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Abstract: In his autobiographical account 'My Life as a Lawyer' Ole Lando wrote: 'I set out to try and unify the substantive contract law in the EU. My efforts started in 1976'. These efforts were to lead to the publication of the Principles of European Contract Law (PECL) in 1995 (Part I), 2002 (Parts I and II), and 2003 (Part III). According to Hugh Beale it is that work for which Ole Lando is best known; and it is for that work that he is regarded as 'one of the most influential figures in the development of European private law to date'. The present contribution therefore deals with these Principles of European Contract Law.

Keywords: Acquis commun, Acquis communautaire, Commentaries on European Contract Laws, Lando, Ole, Non-legislative codification, Principles of European Contract Law, Restatements, Textual Layers, UNIDROIT

Résumé Dans son récit autobiographique « Ma vie de juriste », Ole Lando relate : « J'ai essayé d'unifier, au sein de l'Union européenne, le droit substantiel des contrats. Je m'y suis employé dès 1976 ». Des efforts qui devaient mener à la publication des Principles of European Contract Law (PECL) ; successivement Partie I (1995), Partie I et II (2002), et Partie III (2003). Selon Hugh Beale, c'est ce travail qui fit la renommée de Ole Lando ; et c'est pour ce travail qu'il est considéré comme « l'une de personnalités les plus influentes, à ce jour, dans le développement du droit privé européen ». La présente contribution portera ainsi sur ces Principes Européens du Droit des Contrats.

Keywords: Acquis commun, Acquis communautaire, Commentaries on European Contract Laws, Lando, Ole, Codification non législative, Couches de texte, Principes du droit Européen du Contrat, Restatements, UNIDROIT

Zusammenfassung: In seinem autobiographischen Beitrag "My Life as a Lawyer" schrieb Ole Lando: "Ich habe versucht, das materielle Vertragsrecht in der EU zu vereinheitlichen. Meine Bemühungen begannen 1976". Diese Bemühungen sollten zur Veröffentlichung der *Principles of European Contract Law* (PECL) 1995 (Teil I), 2002 (Teil I und II) und 2003 (Teil III) führen. Laut Hugh Beale ist es dieses Werk, für das Ole Lando am besten bekannt ist; und für dieses Werk gilt er als "eine der einflussreichsten Figuren in der Entwicklung des Europäischen Privatrechts bis

* This is the text of my introductory remarks at a panel on the future of European contract law on the occasion of the conference 'In Memory of Ole Lando' on 25 October 2019 in Copenhagen. While the style of the oral presentation has been maintained, some references have been added in order to allow the reader to pursue further some of the issues that could only briefly be mentioned here.

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heute". Der vorliegende Beitrag befasst sich deswegen mit diesen Grundregeln des Europäischen Vertragsrechts.

Keywords: Acquis commun, Acquis communautaire, Commentaries on European Contract Laws, Grundregeln des Europäischen Privatrechts, Lando, Ole, Nicht-legislative Kodifikation, Restatements, Textstufen, UNIDROIT

1. In his autobiographical account 'My Life as a Lawyer' Ole Lando wrote: 'I set out to try and unify the substantive contract law in the EU. My efforts started in 1976'.[1] These efforts were to lead to the publication of the *Principles of European Contract Law* (PECL) in 1995 (Part I), 2002 (Parts I and II), and 2003 (Part III).[2] According to Hugh Beale it is that work for which Ole Lando is best known; and it is for that work that he is regarded as 'one of the most influential figures in the development of European private law to date'.[3] It thus appears to be appropriate to start this panel on Lando's legacy with the PECL. It is my claim that the PECL still constitute, in spite of the many more recent developments that we have seen since the early 2000s,[4] the most convenient reference text and starting point for any critical assessment of European contract law.[5] On what can this claim be based?

2. The PECL were the first set of model-rules, or 'non-legislative codification', or 'restatement', in any field of private law to have been drafted and published.[6] To

1 10. ZEuP 2002, p. (508) at 519.

2 Ole Lando & Hugh Beale (eds), *Principles of European Contract Law*, *Part I* (1995); Ole Lando & Hugh Beale (eds), *Principles of European Contract Law, Parts I and II* (2000); Ole Lando, Eric Clive, André Prüm & Reinhard Zimmermann (eds), *Principles of European Contract Law, Part III* (2003).

3 Hugh Beale, 'In memoriam: Ole Lando', 27 ERPL 2019, pp 689-693 (at 689).

4 For a recent overview, see Reinhard Zimmermann, 'The textual layers of European contract law', in *Private Law in a Changing World: Essays for Danie Visser* (2020), pp 165–199.

5 Nils Jansen and I, together with twenty colleagues, have attempted to demonstrate this in Nils Jansen & Reinhard Zimmermann, *Commentaries on European Contract Laws* (2018). As far as the *acquis commun* is concerned (i.e. the traditional private law, as laid down in the continental codifications or embodied in the English common law), that work uses the PECL as its point of departure.

6 I have on other occasions attempted to provide a more comprehensive assessment; see e.g. Reinhard Zimmermann, 'Konturen eines Europäischen Vertragsrechts', *Juristenzeitung* 1995, pp 477–491; *Ibid.*, 'Ius Commune and the Principles of European Contract Law: Contemporary Renewal of an Old Idea', in Hector L. MacQueen & Reinhard Zimmermann (eds), *European Contract Law: Scots and South African Perspectives* (2006), pp 1–42; *Ibid.*, 'Principles of European Contract Law', in Jürgen Basedow, Klaus J. Hopt & Reinhard Zimmermann, *The Max Planck Encyclopedia of European Private Law* (2012), pp 1325–1328. 'Non-legislative codification' is a term coined by Nils Jansen, *The Making of Legal Authority: Non-legislative Codifications in Historical and Comparative Perspective* (2010). On the notion of 'restatement', in the present context, see Ralf Michaels, Restatements, in *The Max Planck Encyclopedia of European Private Law* (this n.), pp 1464–1468.

present the law in this manner was, at least for Europe, a novel and immensely successful idea; it was to inspire similar initiatives in other fields.[7] Great care was taken in the preparation of the PECL; all in all it took more than 20 years until Part III had been published. Otherwise than Professor Giuseppe Gandolfi's *Avant-projet of a European Contract Code* (the first volume of which was published in 2004), the PECL are not based on one or two national legal systems which would have served as a model[8]; they are based on comparative research and discourse encompassing all legal families represented in Europe. Otherwise, also, than the *Avant-projet*, work on the PECL was not, essentially, done by one man with a large body of international scholars serving in a more or less consultative function: it was the joint effort of an international group of scholars (officially referred to as Commission on European Contract Law, but commonly known as Lando-Commission). Of course, Ole Lando was the founder and chairman of that group and he thus had the task of gently guiding it towards consensus. But all members of the Commission (who came from all the countries then constituting the EU) had the same say in its deliberations and decisions.[9]

3. It is important to remember that at around the same time a second, very similar project was carried out by UNIDROIT: the drafting of a set of *Principles of International Commercial Contracts* (PICC), the first edition of which appeared in 1994, and the subsequent, amended editions in 2004, 2010, and 2016.[10] Like the PECL, the PICC can be described as a 'non-legislative codification', as a kind of 'restatement', or as a collection of model rules in the field of contract law, though global rather than European and commercial rather than

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7 See, e.g., the *Principles of European Tort Law*, the *Principles of European Trust Law*, the *Principles of European Family Law*, the *Principles of European Insurance Contract Law*, the *Principles of European Insolvency Law*, or the ALI/UNIDROIT *Principles of Transnational Civil Procedure*; all conveniently available in Oliver Radley-Gardner, Hugh Beale & Reinhard Zimmermann (eds), *Fundamental Texts on European Private Law (FunTexts)* (2nd edn. 2016), pp 1576–1640. See also the pertinent entries in, *The Max Planck Encyclopedia of European Private Law* (n. 6).

8 In the case of the *Avant-projet* the Italian *Codice civile* and Harvey McGregor, *Contract Code drawn up on behalf of the English Law Commission* (published by Giuffrè, Milano, in 1993) have served as models. On the *Avant-projet* (or: *Codice Gandolfi*), see Reinhard Zimmermann 'Der "Codice Gandolfi" als Modell eines einheitlichen Vertragsrechts für Europa?', in *Festschrift für Erik Jayme* (2004), pp 1401–1418.

9 Also, ten different persons (from France, England, Scotland, Germany, Austria, the Netherlands, and Denmark) served as reporters for the different chapters of PECL; their names can be found in Lando and Beale I and II (supra n. 2), xiv f. and Lando, Clive, Prüm & Zimmermann (supra n. 2), x f.

10 See most recently, UNIDROIT (ed.), *UNIDROIT Principles of International Commercial Contracts 2016* (2017). A comprehensive commentary has been devoted to the PICC: Stefan Vogenauer (ed.), *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)* (2nd edn 2015); cf. further, e.g., Jan Kleinheisterkamp, in *The Max Planck Encyclopedia of European Private Law*, pp 1727–1732; Michael Joachim Bonell, *An International Restatement of Contract Law* (3rd edn 2005). Bonell was the chairman of all four Working Groups.

general contract law. The way how the Lando-Commission and the various UNIDROIT Working Groups operated were comparable in many respects; and a number of persons (including the respective chairmen) actually served on both bodies.[11] As a result, therefore, the individual solutions set out in PECL and PICC do not very much differ from each other; in a number of areas they are virtually identical.[12] This is due also to the fact that both documents took their cue from the United Nations Convention on Contracts for the International Sale of Goods (CISG), the most successful act of contract law harmonization worldwide[13]; today, it has been ratified by more than 90 states. Fifty-two out of the 132 articles contained in the first two parts of the PECL are modelled on a provision of the CISG.[14] Effectively, therefore, CISG, PECL, and PICC reinforced each other's authority; collectively, they contributed to the emergence and widespread acceptance of a common framework of reference for the development of contract law in Europe and worldwide.[15] The CISG, of course, is part of the law in all the states that have chosen to ratify it. But PECL and PICC have also exercised considerable persuasive influence on law reform initiatives in a number of countries. The reforms of contract law in Germany (2002) and France (2016), and the reformulation of the English penalty rule in 2015 can serve as examples.[16]

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11 The persons serving on both the Lando-Commission and the UNIDROIT Working Groups were Ole Lando, Michael Joachim Bonell, Ulrich Drobnig, Arthur Hartkamp, Denis Tallon, Roy Goode, and Reinhard Zimmermann. Bonell, Lando, Drobnig and Tallon were founding members of both bodies, the others joined the one or the other, or both of them, at a later stage.

12 See, e.g., Arthur Hartkamp, 'Principles of Contract Law', in Arthur Hartkamp, Martijn Hesselink, Ewoud Hondius, Chantal Mak, Edgar du Perron (eds), *Towards a European Civil Code* (4th edn 2011), pp 239–259; Michael Joachim Bonell, *An International Restatement of Contract Law*, pp 335–359.

13 See most recently, Schlechtriem, Schwenzer & Schroeter, *Kommentar zum UN-Kaufrecht (CISG)* (7th edn 2019).

14 See Harry M. Flechtner, 'The CISG's Impact on International Unification Efforts: The UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law', in Franco Ferrari (ed.), *The 1980 Uniform Sales Law: Old Issues Revisited in the Light of Recent Experiences* (2003), pp 169-197 (at 181-187). On the CISG as a 'veritable world sales law' and on its impact on other harmonization efforts, see Michael Joachim Bonell, 'European Contract Law and the Development of Contract Law Worldwide', in *Proceedings of the 4th European Jurists' Forum* (2008), pp 85–110.

15 Ole Lando has referred to a 'troika' of codes on international contract law; see, e.g., Ole Lando, 'CISG and its Followers: A Proposal to Adopt Some International Principles of Contract Law', 53 *American Journal of Comparative Law* 2005, p (379) at 379.

16 For the reform in Germany, see Reinhard Zimmermann, *The New German Law of Obligations: Historical and Comparative Perspectives* (2005); for the reform in France, see François Ancel, Bénédicte Fauvarque-Cosson & Juliette Gest, *Aux sources de la réforme du droit des contrats* (2019); for the English penalty rule, see Reinhard Zimmermann, in *Commentaries* (n. 5), Art. 9:509, [5].

4. It is hardly surprising, therefore, that the subsequent textual layers[17] on the way towards what was envisaged by the European Commission as a European code of contract law were based on the PECL; this applies to the contract rules in the Draft Common Frame of Reference (DCFR), the *Principes Contractuels Communs* (PCC), the 'Feasibility Study' (FS), and the Proposal for a Regulation on a Common European Sales Law (CESL) itself.[18] The 'Principles of the Existing EC Contract Law' (*Acquis Principles* = ACQP)[19] are different because they attempt to remedy what must be considered to be the greatest deficit of the PECL – the fact that the *acquis communautaire*, largely in the field of consumer law (but not exclusively: see, in particular, the *Late Payment Directive* (2000/2011)) was not taken into account when drafting the PECL. This, in turn, was due to the fact that the relevant Directives date from a time when work on the PECL was well on its way. The *Doorstep Selling Directive* (1985), *Unfair Terms Directive* (1993), *Distance Selling Directive*, and *Consumer Sales Directive* (1999) are the most prominent examples.[20] The ACQP constitute a conceptually more coherent, but otherwise faithful, reproduction of the law contained in these directives.[21] But the approach adopted by the group of scholars drafting the ACQP (known as the Acquis Group) was similar to that of the Lando Commission; also the PECL were taken to provide the general framework for devising the ACQP. A network consisting essentially of the Acquis Group and of Christian von Bar's Study Group on a European Civil Code[22] set out to integrate PECL and ACQP, at the same time reconceptualizing the resulting body of rules under the auspices of a general law of obligations. That reconceptualization, however, was reversed by the Expert Group responsible for drafting the FS.

5. What has made the PECL so successful, as far as what may be called, in contradistinction to the *acquis communautaire*, the *acquis commun*? According to Ole Lando and his colleagues in the first Lando-Commission, the PECL are intended to reflect the 'common core' of solutions to problems of contract law.[23]

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17 On the notion of 'textual layers' (originally a term of art in the Scholarship of Roman legal history), see Nils Jansen and Reinhard Zimmermann, 'Contract formation and mistake in European contract law: A genetic comparison of transnational model rules', 31. *Oxford JLS* 2011, p (625-626). at 626; Reinhard Zimmermann, 'Die Auslegung von Verträgen: Textstufen transnationaler Modellregeln', in *Festschrift für Eduard Picker* (2010), pp 1353–1373; and see the essay cited supra, n. 4.

18 All these documents are easily accessible in *FunTexts* (n. 7), pp 1097–1529.

19 See *FunTexts* (n. 7), pp 1047–1096.

20 They can all be found in *FunTexts* (n. 7), under Part I.

21 For a more detailed assessment, see Nils Jansen & Reinhard Zimmermann, 'Restating the *Acquis Communautaire*? A critical examination of the "Principles of the Existing EC Contract Law"', 71 *Modern LR* 2008, pp 505–534.

22 On which see Martin Schmidt-Kessel, Study Group on a European Civil Code, in *The Max Planck Encyclopedia of European Private Law* (n. 6), pp 1611–1614.

23 Lando and Beale I and II (n. 2), xxiv. (The quotation goes on: ' ... or a progressive development from that common core'.)

To some extent, this general statement is hyperbolic. Of course, there may be a common understanding of basic concepts such as contract, damage, or condition. A contract is normally concluded by way of offer and acceptance[24]; the parties to a contract have to have the intention to be legally bound[25]; the general measure of damages should be such as to put the aggrieved party into a position in which he would have been had the contract been duly performed[26]; a contractual obligation can be made conditional upon the occurrence of an uncertain future event[27]: principles such as these may indeed be seen to constitute a common core of European contract law. Sometimes the identity of certain rules across all legal systems may reflect the inherent nature of a specific legal device. The requirement of reciprocity in the law on set-off may be taken to fall into this category.[28] Also, we have a number of rules which have always been regarded as so obviously right that they came to be distilled into a *regula iuris*: the *contra proferentem* rule provides an example,[29] and so does *agere non volenti non currit praescriptio.*[30]

More often, however, the PECL had to make a choice; after all, the contract laws prevailing in the national legal systems of Europe are not uniform; otherwise we would not need instruments such as PECL or CESL. But the way in which these choices have been made bears witness to the quality of discussions in the Lando-Commission and the ability of the members of that Commission critically to assess legal developments in the national legal systems.

The rules on breach of contract in Germany have traditionally been structured by distinguishing different types of breach; while in England, France, and under the CISG, a remedy orientation prevailed under the umbrella of a generalized concept of non-performance. The PECL have followed the latter approach which has also, in 2002, led to a reorientation of German law.[31] In Article 2:101 (1) the PECL specifically state that a contract is concluded if the parties intend to be legally bound and if they reach a sufficient agreement 'without any further requirement'. This implies the refutation of the doctrine of *cause* (which has now also been abandoned in France), and the rejection of the doctrine of consideration (which

24 Chapter 2, s. 2 PECL; and see Gregor Christandl, in: *Commentaries* (n. 5), Art. 2:101 (1), [5].

25 Article 2:101 (1) (a) PECL; and see Christandl, in: Commentaries (n. 5), Art. 2:101 (1), [9] - [11].

26 Article 9:502 PECL; and see Reinhard Zimmermann, in: *Commentaries* (n. 5), Art. 9:502, [8].

27 Article 16:101 PECL; and see Ulrike Babusiaux, in: *Commentaries* (n. 5), Introduction before Art. 16:101, [6].

28 Article 13:101 PECL; and see Andreas Fleckner, in: *Commentaries* (n. 5), Art. 13:101, [4].

29 Article 5:103 PECL; and see Stefan Vogenauer, in: *Commentaries* (n. 5), Art. 5:103, [2] - [3] (noting, however, that the rule has many different emanations in the national legal systems).

30 See, e.g., Art. 14:303 PECL; and see Reinhard Zimmermann, in: *Commentaries* (n. 5), Art. 14:303, [1]; Zimmermann, *Comparative Foundations of a European Law of Set-off and Prescription* (2002), pp 132 f.

31 See the discussion by Sebastian Martens, in: *Commentaries* (n. 5), Introduction before Art. 8:101, [8] - [14].

even in England raises considerable practical difficulties and has turned out to be impervious to theoretical justification).[32] According to Article 9:303 PECL a contract may be terminated by unilateral declaration of the aggrieved party. When this rule was drafted, it was contrary to French law with its requirement that termination had to be ordered by a court of law. Again, however, French law has in the meantime been reformed so as to fall into line with the European mainstream.[33] The PECL have opted for a rule on restitution of what has been supplied under an illegal contract which went against what had traditionally been accepted in many continental legal systems as well as under the English *common law*. At the same time, they have advanced a trend towards greater flexibility in assessing the effects of illegality prominently adopted first in Dutch law and now also, e.g., in England.[34]

6. These examples go to show that the draftsmen of the PECL have been sensitive to the way in which contract law has been and is developing; in some respects they have anticipated that development, at least as far as important individual countries are concerned. The PECL, therefore, were part of and, at the same time, have shaped the mainstream of the international discourse on contract law. Two more illustrations may serve to reinforce that impression.

One of them concerns the law of extinctive prescription. Here we find, in the PECL, a standardized period of three years the running of which is not tied to an objective criterion but is made to depend on whether the creditor knows, or ought reasonably to have known, of the identity of his debtor and of the facts giving rise to his claim. However, the running of that short, general prescription period is not to be deferred indefinitely; it is supplemented by a maximum period, tied to an objective criterion, i.e. the time when the debtor has to effect performance or, in the case of a claim for damages, from the time of the act which gives rise to the claim.[35] These are two of the key features of the prescription regime in the PECL which are supplemented by a number of rules on extension of the period (up to the maximum just mentioned), renewal of the period, and the effects of prescription.[36] That regime, while taking up certain developments in the national legal systems, was first comprehensively set out in the PECL and has since become the mainstream approach.[37]

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32 See the discussion by Christandl, in: *Commentaries* (n. 5), Art. 2:101 (1), [17] - [20].

33 See the discussion by Jens Kleinschmidt, in: *Commentaries* (n. 5), Art. 9:303, [2] - [6].

34 See the discussion by Sonja Meier, in: *Commentaries* (n. 5), Art. 15:102, [28] and Art. 15:104, [3] - [7].

35 Art. 14:201, 14:203, 14:301, 14:307 PECL.

36 Chapter 14, ss 3, 4, and 5.

37 See Zimmermann, in: *Commentaries* (n. 5), Introduction before Art. 14:101, [5] - [11]; Wolfgang Ernst, 'Das Verjährungsrecht des (D)CFR', in Oliver Remien (ed.), *Verjährungsrecht in Europa – zwischen Bewährung und Reform* (2011), pp 67-91.

The other illustration is provided by Article 1:201 (1) PECL: 'Each party must act in accordance with good faith and fair dealing'. This basic principle must, as the official comments make clear,[38] be read in conjunction with its many individual manifestations throughout the PECL. Attention is thus drawn to the most important use of such general principle which is to provide 'piecemeal solutions in response to demonstrated problems of unfairness'.[39] That is exactly what the English courts are doing, in spite of many common lawyers' traditional hostility to a general duty to observe good faith.[40]

7. Of course, the PECL can be, and should be, improved in many respects. Thus, for example, they contain three different sets of rules concerning the restitution of benefits on account of a contract that has been avoided (Article 4:115), that has been terminated (Article 9:307–9:309), and that is ineffective because of illegality (Article 15:104). This does not make sense; it is merely a reflection of the fact that the PECL were drawn up in three different stages. No time was taken to gain a comprehensive picture concerning what may be termed the incidents of unwinding a contract that has, for some reason or another, failed. It is widely accepted today that only one set of rules is required because the problems to be solved in the three situations just mentioned are essentially the same.[41] This was recognized by the third Working Group amending the UNIDROIT PICC[42] and the rules laid down in the 2010- and 2016-versions of the PICC[43] should therefore serve as an inspiration for revising the PECL.[44]

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38 Lando and Beale I and II (supra n. 2), pp 113.

39 *Interfoto Picture Library Ltd.* v. *Stiletto Visual Programmes Ltd.*, [1989] 1 QB 433, 439 (per Bingham LJ).

40 For a comprehensive comparative analysis, see Jan Peter Schmidt, in: *Commentaries* (n. 5), [24] - [53] (for England, see [44] - [46]; conclusion: 'A general duty of good faith is not only found in the vast majority of current legal systems, its recognition also reflects the clear comparative trend, which cuts across the traditional civil law-common law divide').

41 See, e.g., Reinhard Zimmermann, 'Restitutio in integrum', in: *Privatrecht und Methode: Festschrift für Ernst A. Kramer* (2004), pp 735–754; Phillip Hellwege, *Die Rückabwicklung gegenseitiger Verträge als einheitliches Problem* (2004); Hellwege, 'Unwinding of Contracts', in: *The Max Planck Encyclopedia of European Private Law* (n. 6), pp 1751–1755; Pietro Sirena, 'The Rules about Restitution in the Proposal on a Common European Sales Law', 19 *ERPL* 2011, pp 977–1000; Sonja Meier, 'Unwinding of Failed Contracts', 21 *Edinburgh LR* 2017, pp 1–29.

42 Reinhard Zimmermann, 'The Unwinding of Failed Contracts in the Unidroit Principles 2010', 16 *Uniform LR* 2011, pp 563–587.

43 See Art. 3.2.15, 3.3.2, 5.3.5, 7.3.6 f. PICC.

44 See the discussion by Phillip Hellwege, in: *Commentaries* (n. 5), Introduction before Art. 9:305, [16] - [32], Art. 9:306 (Synthesis) and the subsequent commentary.

There are many other rules contained in the PECL which have been refined and reformed by subsequent working groups. Sometimes the changes implemented in documents such as the DCFR, the FS, or the CESL, constitute improvements, but often they do not. That is why a critical comparison of the various textual layers of European contract law is necessary.[45] Yet, as has been stated at the outset of the paper, the PECL still constitute the best point of departure for any attempt to gain orientation within the maze of European contract law[46]; they are, after all, the only set of rules on European[47] contract law which are both free-standing[48] and comprehensive as far as the *acquis commun* is concerned.[49] Of course, they must be supplemented by the *acquis communautaire*, as laid down in the various directives pertaining to private law, and as amalgamated with the *acquis commun* in instruments such as the DCFR, and the CESL (even if it must also be kept in mind that a proper revision of the *acquis communautaire*, as repeatedly envisaged by the European Commission, has not yet taken place).[50]

8. Finally, it should be emphasized that a Europeanization of contract law requires, first and foremost, a re-Europeanization of legal scholarship and legal training; and a common European reference text would appear to be an ideal focus in this endeavour. This may be one of the lessons from the old *ius commune* for the new European legal culture, for key factors for the constitution of large parts of Europe as an integrated cultural space were (1) the universities; (2) the Roman legal sources; and (3) the tradition of law as a scholarly discipline.

We should today use the PECL as foundational text when we teach European contract law, and as an essential background text when we teach our national contract laws: for this will make our students appreciate the specific contours of their own legal systems much more clearly and, at the same time, facilitate access to the other national legal systems. The PECL appear to provide rules that are both reasonable and free from national bias. They can thus serve as a framework and starting point for the further harmonization of contract law on a European level and as a neutral reference point for the further organic assimilation of the various contract laws in Europe by national legislators, judges, and professors.

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45 This is one of the aims of the *Commentaries* (n. 5). For each of the provisions contained in the PECL, the subsequent textual layers are printed underneath and then critically assessed.

46 Nils Jansen and Reinhard Zimmermann, 'Im Labyrinth der Regelwerke', 25 *ZEuP* 2017, pp 761-764. The metaphor has been taken up by Jessica Schmidt, "Book Review", 118 *Zeitschrift für Vergleichende Rechtswissenschaft* 2019, pp 484-486.

47 As opposed to the global law of (commercial) contracts which is the subject of the PICC.

48 In the DCFR, they have been integrated into a general law of obligations.

49 The CESL does not contain rules on illegality, agency, plurality of debtors and creditors, assignment, set-off, and a number of other matters.

50 See Horst Eidenmüller, Florian Faust, Hans Christoph Grigoleit, Nils Jansen, Gerhard Wagner & Reinhard Zimmermann, *Revision des Verbraucher-acquis* (2011).