

Principles of European Law
Study Group on a European Civil Code

**Acquisition and Loss
of Ownership of Goods**
(PEL Acq. Own.)

prepared by
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in co-operation with
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Foreword

The Study Group on a European Civil Code has taken upon itself the task of drafting common European principles for the most important aspects of the law of obligations and for certain parts of the law of property in moveables which are especially relevant for the functioning of the common market. It was founded in 1999 as a successor body to the Commission on European Contract Law, on whose work the Study Group is building.

Both groups have undertaken to ascertain and formulate European standards of ‘patrimonial’ law for the Member States of the European Union. The Commission on European Contract has achieved this for the field of general contract law (*Lando and Beale* [eds.], *Principles of European Contract Law*, Parts I and II combined and revised, The Hague, 2000; *Lando/Clive/Prüm/Zimmermann* [eds.], *Principles of European Contract Law Part III*, The Hague, 2003). These Principles of European Contract Law (PECL) are being adopted with adjustments by the Study Group on a European Civil Code to take account of new developments and input from its research partners. The Study Group is itself dovetailing its principles with those of the PECL, extending their encapsulation of standards of patrimonial law in three directions: (i) by developing rules for specific types of contracts; (ii) by developing rules for extra-contractual obligations, i. e. the law of non-contractual liability arising out of damage caused to another (tort/delict), the law of unjustified enrichment, and the law of benevolent intervention in another’s affairs (*negotiorum gestio*); and (iii) by developing rules for fundamental questions in the law on mobile assets – in particular transfer of ownership, security for credit, and trust.

Like the Commission on European Contract Law’s Principles of European Contract Law, the results of the research conducted by the Study Group on a European Civil Code seek to advance the process of Europeanisation of private law. We have undertaken this endeavour on our own personal initiative and merely present the results of a pan-European research project. It is a study in comparative law in so far as we have always taken care to identify the legal position in the Member States of the European Union and to set out the results of this research in the introductions and notes. That of course does not mean that we have only been concerned with documenting the pool of shared legal values or that we simply adopted the majority position among the legal systems where common ground was missing. Rather we have consistently striven to draw up “sound and fitting” principles, that is to say, we have also recurrently developed proposals and concepts for the further development of private law in Europe.

The working methods of the Commission on European Contract Law and the Study Group on a European Civil Code were likewise quite similar. The Study Group, however, has had the benefit of Working (or Research) Teams – groups of younger legal scholars under the supervision of a senior member of the Group (a Team Leader) which undertook the basic comparative legal research, developed the drafts for discussion and assembled the extensive material required for the notes. Furthermore, to each Working Team was

allocated a consultative body – an Advisory Council. These bodies – deliberately kept small in the interests of efficiency – were formed from leading experts in the relevant field of law who are representative of the major European legal systems. The proposals drafted by the Working Teams and critically scrutinised and improved in a series of meetings by the respective Advisory Council were submitted for discussion on a revolving basis to the actual decision-making body of the Study Group on a European Civil Code, the Co-ordinating Group. Until June 2004 the Co-ordinating Group consisted of representatives from all the jurisdictions belonging to the EU immediately prior to its enlargement in Spring 2004 and in addition legal scholars from Estonia, Hungary, Norway, Poland, Slovenia and Switzerland. Representatives from the Czech Republic, Malta, Latvia, Lithuania and Slovakia joined us after the June meeting 2004 in Warsaw.

Besides its permanent members, other participants in the Co-ordinating Group with voting rights included all the Team Leaders and – when the relevant material was up for discussion – the members of the Advisory Council concerned. The results of the deliberations during the week-long sitting of the Co-ordinating Group were incorporated into the text of the Articles and the commentaries which returned to the agenda for the next meeting of the Co-ordinating Group (or the next but one depending on the work load of the Group and the Team affected). Each part of the project was the subject of debate on manifold occasions, some stretching over many years. Where a unanimous opinion could not be achieved, majority votes were taken. As far as possible the Articles drafted in English were translated into the other languages either by members of the Team or third parties commissioned for the purpose. The number of languages into which the Articles could be translated admittedly varies considerably from volume to volume. That is in part a consequence of the fact that not all Working Teams were equipped with the same measure of financial support. We also had to resign ourselves to the absence of a perfectly uniform editorial style. Our editing guidelines provided a common basis for scholarly publication, but at the margin had to accommodate preferences of individual teams. However, this should not cause the reader any problems in comprehension.

Work on this series of Principles of European Law had begun long before the European Commission published its Communication on European Contract Law (in 2001), its Action Plan for a more coherent European contract law (in 2003), and its follow-up Communication “European Contract Law and the revision of the *acquis*: the way forward” (in 2004). These documents for their part were published before we formed the Network of Excellence, together with other European research groups and institutions, which have been collaborating in the preparation of an Academic Common Frame of Reference with the support of funds from the European Community’s Sixth Research Framework Programme. This network first published an outline edition of its research results: as a first step, in 2008, an interim outline edition (*von Bar/Clive/Schulte-Nölke et al.* [eds.], Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR). Interim Outline Edition, Munich 2008); and, with revisions and additions, a final outline edition this year (*von Bar/Clive/Schulte-Nölke et al.* [eds.], Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR). Outline Edition, Munich 2009). A final and full edition was published later in 2009 (*von Bar/Clive*, Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR). Full Edition,

Munich 2009). The texts laid before the public by the Study Group on a European Civil Code are integrated in these latter texts. However, the extensive comparative law introductions and the translations of the articles of the Book or Part concerned into the other languages of the Member States are only being published in the PEL Series. Moreover, there are occasionally small discrepancies between the model rules published in this series and those of the Draft Common Frame of Reference because each publication within the PEL Series was conceived and prepared as a self-contained treatment of the field while in the consolidated composite DCFR text certain provisions could be trimmed. Repetitions could be avoided. It was also possible to respond to criticism which had been made of the model rules in the PEL Series and which had convinced us of the need to make changes.

In order to leave no room for misunderstanding, it is important to stress that these Principles have been prepared by impartial and independent-minded scholars whose sole interest has been a devotion to the subject-matter. None of us have been rewarded for taking part or mandated to do so. None of us would want to give the impression that we claim any political legitimisation for promoting harmonisation of the law. Our legitimisation is confined to curiosity and an interest in Europe. In other words, the volumes in this series are to be understood exclusively as the results of scholarly legal research within large international teams. Like every other scholarly legal work, they restate the current law and introduce possible models for its further development; no less, but also no more. We are not a homogenous group whose every member is an advocate of the idea of a European Civil Code. We are, after all, only a *Study Group*. The question whether a European Civil Code is or is not desirable is a political one to which each member can only express an individual view.

Osnabrück, November 2009

Christian v. Bar

Our Sponsors and Donors

The project of the Study Group on a European Civil Code represents a research endeavour in legal science of extraordinary magnitude. Without the generous financial support of many organisations and individuals its realisation would not have been possible.

Our thanks go first of all to the *Deutsche Forschungsgemeinschaft (DFG)*, which has supplied the lion's share of the financing for the first phase of this project, including the salaries of the Working Teams based in Germany and the direct travel costs for the meetings of the Coordinating Group and the numerous Advisory Councils. The work of the Dutch Working Teams was financed by the *Nederlandse Organisatie voor Wetenschappelijk Onderzoek (NWO)*. Further personnel costs were met by the Flemish *Fonds voor Wetenschappelijk Onderzoek-Vlaanderen (FWO)*, the *Onassis-Foundation*, the Austrian *Fonds zur Förderung der wissenschaftlichen Forschung*, *Norges forskningsråd* (the Research Council of Norway) and the *Fundação Calouste Gulbenkian*. From the middle of 2005 funds were made available to us under the mantle of the 'CoPECL' Network of Excellence established under the European Union's Sixth Framework Programme for Research and Technological Development.

The work of the Austrian working team was financed by the Austrian *Fonds zur Förderung der wissenschaftlichen Forschung (FWF)* and the European Commission's Sixth Framework Program for Research and technological Development.

In addition we have consistently been able to fall back on funds made available to the respective organisers of the eighteen week long sittings of the Coordinating Group by the relevant university or other sources within the country concerned. It is therefore with the deepest gratitude that I must also mention the *Consiglio nazionale forense* (Rome) and the *Istituto di diritto privato* of the *Università di Roma La Sapienza*, which co-financed the meeting in Rome (June 2000), which followed our inaugural meeting in Utrecht (December 1999). The session in Salzburg (December 2000) was supported by the Austrian *Bundesministerium für Bildung, Wissenschaft und Kultur*, the *Universität Salzburg* and the *Institut für Rechtspolitik* of the *Universität Salzburg*. The discussions in Stockholm (June 2001) were assisted by the *Department of Law, Stockholm University*, the *Supreme Court Justice Edward Cassel's Foundation* and *Stiftelsen Juridisk Fakultetslitteratur (SJF)*. The meeting in Oxford (December 2001) had the support of *Shearman & Sterling*, the *Hulme Trust*, *Berwin Leighton Paisner* and the *Oxford University Press (OUP)*. The session in Valencia (June 2002) was made possible by the *Asociación Nacional de Registradores de la Propiedad, Mercantil y Bienes Muebles*, the *Universitat de València*, the *Ministerio Español de Ciencia y Tecnología*, the *Facultad de Derecho* of the *Universitat de València*, the *Departamento de Derecho Internacional*, *Departamento de Derecho Civil* and the *Departamento de Derecho Mercantil "Manuel Broseta Pont"* of the *Universitat de València*, the law firm *Cuatrecasas*, the *Generalitat Valenciana*, the *Corts Valencianes*, the *Diputación Provincial de Valencia*, the *Ayuntamiento de Valencia*, the *Colegio de Abogados de Valencia* and *Aranzadi Publishing*

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Osnabrück, November 2009

Christian v. Bar

Preface to this volume

This book has been prepared by a working group based at the universities of Graz and Salzburg, consisting of Professor *Brigitta Lurger* (team leader), Dr. *Wolfgang Faber* (co-leader), *Anastasios Moraitis*, *Martine Costa*, *Alessio Greco*, *Martin Lilja*, *Ernest Weiker* and Dr. *Rui Cascao*. The work prepared by this group was first published as Book VIII of the Draft Common Frame of Reference (DCFR).¹ After this publication, additional national notes were prepared with the help of student assistants *Karina Gabler*, *Reinhard Jantscher* and *Elisabeth Schiller*. *Karina Gabler* and *Elisabeth Schiller*, together with *Monika Lammer*, also revised and extended the annexes to this book, which build upon the DCFR annexes prepared by *Daniel Smith* and his team at the University of Osnabrück.² The whole administrative and organisational work at the University of Graz was perfectly taken care of by *Judith Konrad*. The authors wish to express their gratitude to all these collaborators for their invaluable help. Special thanks are also due to *José Carlos de Medeiros Nóbrega* who, in addition to co-authoring the national report for Portugal, drafted a number of national notes for Portugal and provided a lot of additional information on Portuguese law to the working group.

Completing the work published in this book would not have been possible without the assistance and critical supervision by the working group's advisory council (Professors *Hugh Beale*, *Michael Bridge*, *Torgny Håstad*, *Matthias Storme* and *Anna Veneziano*), and the detailed information provided by our national reporters. All names are listed on page IV. We also thank all those who contributed with translations of the black letter rules; their names appear at the beginning of each translation published in this volume. A special word of thanks is owed to Professor *Eric Clive* (Edinburgh) who, in addition to manifold help regarding drafting and terminology, undertook the enormous work of a linguistic supervision of the whole Book VIII as published in the DCFR Full Edition.

The work finally leading to these Principles of acquisition and loss of ownership of goods started in late 2001, initiated and then headed by Professor *Johannes Michael Rainer* in close cooperation with Professor *Brigitta Lurger* and Dr. *Wolfgang Faber* (Salzburg). In 2005 the formal responsibility for the project was finally taken over by *Brigitta Lurger* (Graz) and *Wolfgang Faber* (Salzburg). Working papers and draft proposals were presented to, and discussed by, the Co-ordinating Group of the Study Group on a European Civil Code during its meetings in Oporto (December 2002), Leuven (December 2003), Warsaw (June 2004), Berlin (June 2005), Oslo (June 2006), Lucerne (December 2006), Budapest (June 2007), Prague (December 2007) and finally in Athens (June 2008). Before 2005, the following persons had contributed to the project as research assistants:

¹ *von Bar/Clive* (eds.), *Principles, Definitions and Model Rules of European Private Law – Draft Common Frame of Reference (DCFR) Full Edition* (2009), Volume V.

² The names of the respective team members appear in a footnote at the beginning of each register.

Dr. Erwin Schön, Dominik Fuchs, Stefan Szücs, Dr. Jakob Stagl, Margareth Prisching, Sophie Menapace, Irene Simader and Immanuel Gerstner. Further members of the project group in its initial phase were Dr. Johanna Filip-Fröschl and Gundula Peer (Salzburg) and Professors Willibald Posch and Martin Pennitz (Graz). Ferenc Szilágyi and Daniele Mattiangeli were members of the working group for shorter periods after 2005. Professor Johannes Michael Rainer and Professor Peter Mader (Salzburg) also co-operated with the working group at later stages of the project. Also, student assistant Georgia Neumayer helped in various ways.

A final acknowledgement refers to the Austrian *Fonds zur Förderung der wissenschaftlichen Forschung* (FWF) and to the European Commission's Sixth Framework Program for Research and Technological Development. Our work could not have been accomplished without the funding of these institutions.

The national notes contained in this book were completed at different stages. In general, they should state the law as of January 2009. However, with regard to a couple of countries, later developments could be taken into account.

Graz and Salzburg,
September 2010

Brigitta Lurger
Wolfgang Faber

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Chapter 5: Production, combination and commingling

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Chapter 6: Protection of ownership and protection of possession

Section 1: Protection of ownership

Article VIII. – 6:101: Protection of ownership

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Article VIII. – 6:203: Entitlement to recover as protection of mere possession

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