

**Danny Busch, Ewoud H. Hondius, Hugo J. van Kooten, Harriët N. Schelhaas, Wendy M. Schrama (eds), *The Principles of European Contract Law and Dutch Law – A Commentary*, Ars Aequi Libri & Kluwer Law International: Nijmegen & The Hague/London/New York 2002, 471p.**

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In this book, a number of Dutch authors (nineteen altogether) have attempted to compare the *Principles of European Contract Law*, Parts I and II (edited by *Ole Lando* und *Hugh Beale*, Kluwer International, The Hague/London/Boston, 2000) with the corresponding rules of the Dutch *Burgerlijk Wetboek* and provide a commentary. The attempt to draw a comparison with Dutch law is appealing for two reasons. First, the *Burgerlijk Wetboek* is amongst the most recent civil law codes in Europe: its most important parts only entered into force in 1992. Comprehensive legal comparisons have been undertaken throughout its forty-year genesis. The second and closely related reason is that it is generally no longer possible to categorize the new Dutch *Burgerlijk Wetboek* under the ‘familiar’ legal traditions. Whereas the old Dutch *Burgerlijk Wetboek* was strongly influenced by French law, the new law reflects various elements of Germanic and Anglo-Saxon legal traditions. It is often said that the Dutch codification is stuck ‘in the Channel’ between the three great legal traditions in Europe. This is what makes it so interesting, as a potential model for a European Code on Contract Law and as a subject of comparison with the European Principles which are considered ‘modern’.

The work is written in English and begins with a most interesting introduction by Ewoud Hondius about the genesis of the Principles of European Contract Law and modern Dutch private law (pp 13-27). Thereafter, the book strictly follows the structure of the European Principles. Each principle has been reproduced and, in contrast to the original edition of the European Principles, provided with an abridged commentary (usually dispensing with practical examples). The book then provides an English translation of the Dutch article together with its commentary. A concluding section compares each of the provisions presented. In this respect, the commentaries on the Dutch regulations as well as the authors’ comparisons differ greatly both in quality and length.

The challenge which the book faces lies in its intended readership or the aims set by the editors. As the editors state in the foreword, its first aim is to bring the European Principles to the attention of a wider range of Dutch lawyers. Its second aim is to provide an introduction to Dutch contract law for non-Dutch lawyers. Clearly, this ‘double function’ harbours problems for the structure of the commentary and requires compromises. This is explained in the following.

As stated above, the comments made on the European Principles are usually provided in abridged form and without any practical examples. This may well prove

an effective introduction for Dutch readers. However, should they wish to learn more about the individual provisions then they will be forced to refer to the more detailed commentaries of *Lando/Beale*. Even the points on Dutch law will probably hold little interest for Dutch readers who will refer to the literature available in their own language. However, it would have been relatively easy to have published a synopsis in the form of an appendix referencing the articles of the *Burgerlijk Wetboek* to the corresponding principles of the European Principles. This would have considerably increased the practical value of the book for domestic lawyers. The Dutch lawyer, who is perhaps not so familiar with the international code of *Lando/Beale*, could then have quickly found the corresponding provision in the European Principles using his own law as a starting point.

Foreign readers have different needs. From their point of view, the abridged reproduction of the European Principles may not be any more problematic. Their interest lies in using the book to approach Dutch law by means of the 'reference system of the European Principles'. The real value for foreign readers (besides the English translation of the Dutch provisions) mainly lies in the comments on Dutch law and comparison with the European Principles. Considering the needs of the foreign reader, a detailed commentary and comparison would therefore have been desirable in places. As it stands, the references to specialist Dutch literature will prove of little help to readers who are not fluent in Dutch. The book would also have benefited from a more detailed investigation of Dutch law and legal practice (as one finds in the Dutch commentary by *Busch* on Article 6:111 PECL). This is particularly important with regard to Dutch provisions which pursue a different regulatory concept than that of the European Principles. Accordingly, the 'knock-out rule' generally applies to conflicting general conditions ('battle of forms') pertaining to Article 2:209 (1) PECL whereas Article 6:225 (3) BW is based on the 'first shot rule'. In such instances the foreign reader would have benefited from information not only about the doctrine but also about the existing case law and practical experience in Holland. It could perhaps have increased the 'competition' for the 'best regulation'.

The editors have broken new ground with this publication. It is the first time that such a project has been undertaken. It shows just how difficult it is to produce a book designed to meet the demands of a national and international readership. The remarks made here are by no means intended as criticism. Rather, they should encourage the editors to publish a new commentary with some revisions in the near future. In any case, a new edition seems necessary now that the third part of the European Principles has been published. However, perhaps more important than any of the comments made so far is the hope that this book could establish a new type of commentary and promote the European Principles as a means of reference in order to understand the private laws of each state. One hopes that the Dutch example will encourage jurists from other countries to pursue similar projects about their national laws. This publication would then achieve something of true stature.