KLUWER LAW INTERNATIONAL

EUROPEAN REVIEW OF PRIVATE LAW

Wolters Kluwer
Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

Published by *Kluwer Law International*
P.O. Box 316
2400 AH Alphen aan den Rijn
The Netherlands

Sold and distributed in North, Central and South America by *Aspen Publishers, Inc.*
7201 McKinney Circle
Frederick, MD 21704
United States of America

Sold and distributed in all other countries by *Turpin Distribution*
Pegasus Drive
Stratton Business Park, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom

ISSN 0928-9801

This journal should be cited as (2009) 17 *ERPL* 4

The *European review of Private Law* is published six times per year.
Subscription prices for 2009 [Volume 17, Numbers 1 through 6] including postage and handling:
EUR568/USD758/GBP418 (print)

This journal is also available online at www.kluwerlawonline.com.
Sample copies and other information are available at www.kluwerlaw.com.
For further information at please contact our sales department at +31 (0) 172 641562 or at sales@kluwerlaw.com.

For advertisement rates please contact our marketing department at +31 (0) 172 641525 (Marina Dordic) or at marketing@kluwerlaw.com.

The *European review of Private Law* is indexed/abstracted in the *European Legal Journals Index.*

Printed on acid-free paper

EUROPEAN REVIEW OF PRIVATE LAW
REVUE EUROPÉENNE DE DROIT PRIVÉ
EUROPÄISCHE ZEITSCHRIFT FÜR PRIVATRECHT

Contact
C.B.P. Mahé, *e-mail: erpl@kluwerlaw.com*

Founded in 1992 by Ewoud Hondius and Marcel Storme

ISSN 0928-9801

Typeface ITC Bodoni Twelve
Design Dingoj | Peter Oosterhout, Diemen-Amsterdam
Printed in the Netherlands

European Review of Private Law 4-2009[675-702] © Kluwer Law International BV | Printed in the Great Britain

European Construction Law and the Draft Common Frame of Reference: Selected Topics

BENOÎT KOHL*

ABSTRACT: Chapter IV.C-3 of the academic 'Draft Common Frame of Reference', published in February 2009, deals with the specific construction contract (Articles IV.C-3:101 to IV.C-3:108), that is, the contract 'under which one party, the constructor, undertakes to construct a building or other immovable structure, or to materially alter an existing building or other immovable structure, following a design provided by the client' (Article IV.C-3:101). The aim of this paper was, first, to set out some points of comparison, in relation with the building of immovable structures only, between the solutions provided under the Draft Common Frame of Reference and under Belgian law to the same legal issue (especially the variations ordered by the client, the delivery procedure and the liability for defects that appear after delivery of the works) and then to discuss the specific rules existing in Belgium regarding the acquisition by consumers of buildings (houses or apartments) under construction. Finally, I will discuss the question as to whether it could also be useful to take further steps towards harmonizing consumer protection in the field of construction law.

RÉSUMÉ : Le Chapitre IV.C.-3 du Projet de Cadre Commun de Référence (PCCR) académique, publié en février 2009, traite du contrat spécial de 'construction' (Articles IV.C-3:101 à IV.C-3:108), c'est-à-dire du contrat ' dans lequel une partie, le constructeur, doit réaliser un édifice ou tout autre ouvrage immobilier, ou modifier de manière importante un ouvrage existant ou tout autre bien immobilier, selon des plans fournis par le client ' (Article IV.C-3:101). Dans la présente contribution, nous exposons d'abord quelques points de comparaison, uniquement en rapport avec la construction d'ouvrages immobiliers, entre les solutions apportées par le Projet de Cadre Commun de Référence et par le droit belge à un même problème juridique (en particulier les changements opérés par le client, la procédure de réception et la responsabilité pour les défauts apparaissant après la réception des travaux) et nous développons ensuite les règles particulières existant en Belgique en matière d'acquisition par des consommateurs d'immeubles (maisons ou appartements) en construction. Enfin, nous examinons la question de savoir s'il est également opportun de s'engager dans la voie d'une harmonisation de la protection du consommateur en droit de la construction.

ZUSAMMENFASSUNG: Kapitel IV.C.-3 des im Februar 2009 veröffentlichten akademischen Entwurfs des Gemeinsamen Referenzrahmens (DCFR) betrifft den besonderen „Bauwerkvertrag" (Artikel IV.C-3:101 bis IV.C-3:108), d.h. den Vertrag, durch welchen „sich eine Partei, der Hersteller, dazu verpflichtet, ein Bauwerk oder eine andere unbewegliche Sache zu errichten, oder ein vorhandenes Bauwerk oder eine vorhandene andere unbewegliche Sache wesentlich zu ändern, und dabei den Plänen folgt, die der Kunde zur Verfügung stellt" (Artikel IV.C-3:101). In vorliegendem Beitrag werden wir zunächst

* PhD (Liège), LLM (Cantab.), LicJur (Liège); Professor at the University of Liège; Attorney (of counsel Stibbe Brussels). Paper based on a presentation made at the 2007 Ius Commune Research School conference (www.iuscommune.eu) at the Faculty of Law of the University of Liège (www.droit.ulg.ac.be).

einige auf die Errichtung von Bauwerken beschränkte Vergleichspunkte zwischen den Lösungen des Entwurfs des gemeinsamen Referenzrahmens und den Lösungen des belgischen Rechts zu einem selben rechtlichen Problem erörtern (insbesondere die durch den Kunden verlangten Änderungen, das Abnahmeverfahren und die Haftung für die nach der Bauabnahme auftretenden Mängel). Wir werden im Anschluss die besonderen in Belgien bestehenden Regeln im Bereich des Erwerbs durch Verbraucher von im Bau befindlichen beweglichen Sachen (Häusern oder Wohnungen) ausführen. Abschlie end werden wir die Frage prüfen, ob es ebenfalls angebracht sein könnte, weitere Schritte in Richtung einer Harmonisierung des Schutzes des Verbrauchers im Baurecht zu unternehmen.

1. Introduction

1. Chapter IV.C-3 of the recent 'Draft Common Frame of Reference' (DCFR) (Outline Edition)[1] deals with the specific service of 'construction' (Articles IV.C-3:101 to IV.C-3:108). It integrates, with minor variations, Chapter 2 of the 'Principles of European Law – Service Contracts' (PELSC), prepared by the Study Group on a European Civil code.[2]

2. The construction contract is defined by the DCFR as the contract 'under which one party, the constructor, undertakes to construct a building or other immovable structure, or to materially alter an existing building or other immovable structure, following a design provided by the client' (Article IV.C-3:101).[3]

---

[1] C. von Bar, E. Clive, & H. Schulte-Nölke e. (eds), *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR). Outline Edition* (Munich: Sellier, 2009). About the previous version of the DCFR (Interim Edition), see. a.o. R. Schulze (ed.), *Common Frame of Reference and Existing EC Contract Law* (Munich: Sellier, 2008); P. Ancel, et al., 'Regards croisés sur le Cadre commun de référence', *Revue des contrats* 2008, 917; J. Smits, 'The Draft Common Frame of Reference (DCFR) for a European Private Law: Fit for Purpose?', 15 *Maastricht Journal of European and Comparative Law* (2008), 145; B. Fauvarque-Cosson, 'Terminologie, principes, élaboration de règles modèles: les trois volets du cadre commun de réréfence', *Revue trimestrielle de droit européen* (2008), 695; H. Eidenmüller, et al, 'Le cadre commun de référence pour le droit privé européen. Les questions de son évaluation et les problèmes de codification', *Revue trimestrielle de droit europeen* (2008), 761.

[2] J.M. Barendrecht, et al, *Principles of European Law (Study Group on a European Civil code). Service Contracts (PEL SC)* (Munich, Brussels and Berne, Sellier, Bruylant and Staempfli, 2007). See also on this topic: C. Wendehorst, 'Das Vertragsrecht der Dienstleistungen im deutschen und künftigen europäischen Recht', *Archiv für die civilistiche Praxis* (2006), 205 at 290–296; M.B.M. Loos (Service Contracts), in A. Hartkamp, et al. (eds), *Towards a European Civil code*, 3rd edn (Nijmegen and The Hague: Ars Aequi Libri and Kluwer Law International, 2004), 571; M.B.M. Loos, 'Towards a European Law of Service Contracts', *European Review of Private Law* (2001), 565; B. Tilleman & A. Verbeke, '(Re-)codification du droit des contrats? Illustrations à l'aide du droit de la vente, de l'entreprise et des contrats innommés', in H. Cousy, et al., *Droit des contrats. France, Belgique*, coll. Contrats & Patrimoine (Brussels: Larcier, 2005), 21 at 33; J.M. Barendrecht, et al, 'Principles of European Law on Service Contracts (PEL SC) in bouwcontractenrechtelijk perspectief', *Tijdschrift voor Bouwrecht* (2008), 689.

[3] According to commentary of the PELSC, 'Construction can be described as the process by which the input of materials and components leads to the formation of a new structure or thing (output). The

3. The aim of this paper was, first, to set out some points of comparison, in relation with the building of immovable structures only, between the solutions provided under the DCFR and under Belgian law to the same legal issue. I will particularly focus my attention on the following more critical issues: (1) variations ordered by the client, (2) delivery procedure, and (3) liability for defects that appear after delivery of the works. In the second part of this paper, I will briefly consider the specific rules existing in Belgium regarding the acquisition by consumers of buildings (houses or apartments) under construction. Finally, I will discuss the question of whether it could also be useful to take further steps towards harmonization in the field of 'European consumer construction law'.

2. DCFR *v.* Belgian construction law: Selected Issues

2.1 Variations Ordered by the Client

4. The issue of the variations of the construction contract is not covered in the specific Chapter IV.C-3 of the DCFR ('Construction') but in the general provisions contained in Chapter IV.C-1, which apply to any kind of service contract. Article IV.C-2:109 DCFR reads as follows:

> (1) Without prejudice to the client's right to terminate under IV.C.-2:111 (Client's right to terminate), either party may, by notice to the other party, change the service to be provided, if such a change is reasonable taking into account:
>
> (a) the result to be achieved;
> (b) the interests of the client;
> (c) the interests of the service provider; and
> (d) the circumstances at the time of the change.
>
> (2) A change is regarded as reasonable only if it is:
>
> (a) necessary in order to enable the service provider to act in accordance with IV.C.-2:105 (Obligation of skill and care) or, as the case may be, IV.C.-2:106 (Obligation to achieve result);
> (b) the consequence of a direction given in accordance with paragraph (1) of IV.C.-2:107 (Directions of the client) and not revoked without undue delay after receipt of a warning in accordance with paragraph (3) of that Article;
> (c) a reasonable response to a warning from the service provider under IV.C.-2:108 (Contractual obligation of the service provider to warn); or

---

building of an immovable structure is one of the most important examples of construction' (Barendrecht, et al, 2007, 309).

(d) required by a change of circumstances which would justify a variation of the service provider's obligations under III.-1:110 (Variation or termination by court on a change of circumstances).

(3) Any additional price due as a result of the change has to be reasonable and is to be determined using the same methods of calculation as were used to establish the original price for the service.

(4) In so far as the service is reduced, the loss of profit, the expenses saved and any possibility that the service provider may be able to use the released capacity for other purposes are to be taken into account in the calculation of the price due as a result of the change.

(5) A change of the service may lead to an adjustment of the time of performance proportionate to the extra work required in relation to the work originally required for the performance of the service and the time span determined for performance of the service.

5. Just as the authors of the PELSC explain:

> this article deals with changes of the choices the client has already made, either in the contract, or in the documents or drawing to which the contract refers, or in directions that are given at a later stage in the course of the service process. Although these changes amount to modifications of the contract, paragraph (1) provides that a party may be required to accept such a change in the contract. A party may only be coerced to do so if that change is to be considered reasonable....[4]

6. Applied in the field of construction works, such rules deviate from Belgian law, at least if the contract is for a lump sum and in so far as the change of the service is not necessitated by incomplete or faulty plans submitted by the client. Indeed, according to Article 1793 of the Belgian Civil code, changes in the manner of performance of the work must be authorized by the client to be proved in writing:

> Where an architect or a constructor has undertaken to erect a building at a fixed price, according to a plan settled and agreed with the owner of the ground, he may not ask for any increase in the price, either under the pretext of increase in labour or material, or under that of changes or additions made in the plan, unless those changes or additions have been authorized in writing and the price agreed with the owner.

---

[4] Barendrecht, et al, 2007, 260.

7. Therefore, unless otherwise agreed upon by the parties, the remuneration remains the same. In other words, unauthorized deviations from the plan do not entitle the building constructor to a higher remuneration than that agreed upon in the original contract. Belgian lump sum private works contracts require the client to define clearly the nature of the works, with plans and specifications. The building constructor is bound by these plans and specifications and is responsible for the design risk; the constructor is not entitled to any increase in price if variations are not authorized in writing and the price was agreed upon with the client.[5] At first sight, this rule seems to be contrary to the solution adopted in Article IV.C-2:109 DCFR, at least on two points: (1) Article IV.C-2:109 DCFR does not impose on the building constructor the duty to demonstrate that the change order was issued in writing and that, following the order, the price adjustment was approved by the client in writing, and (2) this article states that a change of the service will be deemed reasonable (and therefore will justify an increase in the price) if that change of service is required by a change of circumstances.

8. However, one cannot be misled by the pure wording of Article 1793 of the Belgian Civil code. Indeed, as explained below, (1) one can observe a tendency of the courts to construe this provision as narrowly as possible; moreover, (2) case law and legal doctrine accept that the building constructor is entitled to a price adjustment when confronted with conditions unexpected at the time of conclusion of the contract, causing considerable difficulties in the performance of the service and leading to a serious disturbance in the balance of the contract; this is an application of the so-called '*sujétions imprévues*' theory.

9. (1) *Article 1793 of the Civil code is to be construed narrowly*. In Belgium, as in France, 'the rigid rule contained in article 1793 of the Civil code has led to much litigation. The tendency of the courts to construe this provision as narrowly as possible is obvious'.[6] Indeed, Article 1793 deviates from the general rule of contract law that does not require the service provider to prove that the variations had been expressly authorized in writing by the client, in order to ask for an increase in the price. Hence, this provision is interpreted as narrowly as possible.[7]

---

[5] On Art. 1793 of the Civil code, see a.o. V. Van Houtte, 'Artikel 1793', in *Bijzondere overeenkomsten. Artikelgewijs Commentaar* (Mechelen: Kluwer, 2008); G. Baert, *Aanneming van werk* (Antwerp: Story-Scientia, 2001), 348 ff.; W. Goossens, *Aanneming van werk: het gemeenrechtelijk dienstencontract* (Brugge, die keure, 2003), 567 ff.; A. Delvaux & D. Dessard, *Le contrat d'entreprise de construction*, coll. Répertoire Notarial, book IX.8 (Brussels: Larcier, 1991), 112 ff.

[6] W. Lorenz, *International Encyclopedia of Comparative Law. Volume VIII (specific contracts) – Chapter 8: Contracts for Work on Goods and Building Contracts* (Tübingen: J.C.B. Mohr, 1980), 50.

[7] See a.o. Baert, 2001, 362; M.A. Flamme, et al., *Le contrat d'entreprise. Chronique de jurisprudence (1990-2000)* (Brussels: Larcier, 2001), 297; L. Simont, J. De Gavre, & P.A. Foriers, 'Examen

10. The application of Article 1793 supposes that the following cumulative conditions are met:

(1) The contract must be an 'absolute' lump sum contract. This situation occurs when the constructor agrees to execute a described and specified project for a fixed price.[8] Article 1793 shall not be applied to contracts in which the client has a right to impose variations to the original works. For instance, the application of Article 1793 is excluded if the parties agreed on an 'unit price contract' (contract based on estimated quantities of items included in the project and their unit price, the final price being dependent on the quantities needed to carry out the work) or a 'cost plus contract' (contract in which the client agrees to pay the cost of all labour and materials plus an amount for constructor overhead and profit; this amount is generally a percentage of the labour and material cost).
(2) The construction works must result in the construction of a new building; Article 1793 shall not apply in the case of a renovation of an existing building.[9]
(3) Plans must have been settled and agreed with the owner of the ground.
(4) The contract must be entered into between the building constructor and 'the owner of the land'.[10] Consequently, the strict rule laid down in Article 1793 shall not be applied to a contract between the constructor and its sub-constructor.[11]
(5) The client must not be considered to have waived its rights; parties to a lump sum contract may write into their contract a clause that obliges the client to pay for additional work, without complying with the strict formal rules of Article 1793.

11. In brief, the scope of application of Article 1793 comes to very little. Moreover, there is authority in the legal doctrine to support the point of view that the client's protection organized by this provision should be reconsidered. Goossens, for instance, does not see any imperious reason that would justify such a fundamental deviation from the classical rule of the 'liberty of forms' ('*consensualisme*'); the author argues that the written requirement rule of Article 1793 should better be replaced by a legal duty to inform, imposed on any (building) constructor facing change orders placed by his client.[12]

---

de jurisprudence (1988-1991). Les contrats spéciaux', *Revue Critique de Jurisprudence Belge* (1999), 843.

8 Cass. 29 May 1981, *Rechstkundig Weekblad*, 1981–1982, 1746.

9 See Cass., 4 Oct. 1951, *Pasicrisie* 1952, I, 43; Cass., 16 Mar. 1972, *Rechtskundig Weekblad* 1971–1972, 1979.

10 Article 1793 also applies to building lease contracts.

11 Cass. 8 May 1964, *Pasicrisie* 1964, I, 953.

12 Goossens, 2003, 580.

12. Therefore, the decision of the authors of the DCFR not to follow the solution provided for in Belgium (or in France) by Article 1793 of the Civil code has to be welcomed. More precisely, Article IV.C-2:109(2)(b) DCFR, which makes a direct link with Article IV.C-2:107(3),[13] reconciles the necessity for the building constructor to be paid in case of variations ordered by the client (without being under an obligation to prove that the variation and the price of such were agreed in writing), with the need to protect the client through accurate information to be provided by the building constructor.

13. (2) *The* '*sujétions imprévues*' *theory*. Article IV.C-2:109 DCFR also provides for a solution should a change of the service result from undesired circumstances that are beyond the control of the parties; indeed, following Article IV.C-2:109(2)(d), a change of service is regarded as reasonable if it is 'required by a change of circumstances which would justify a variation of the service provider's obligations under III-1:110 (Variation or termination by court on a change of circumstances)'. In this case, the contractor is entitled to receive additional remuneration, as explained in Article IV.C-2:109(3).

14. Under Belgian law, as a matter of principle, when a global price is fixed, 'neither miscalculations of the constructor nor subsequent changes in the basis of the price calculation will be taken in account. This applies also to extraordinary or unforeseeable circumstances which strike at the root of the contract price'.[14] Belgian courts have constantly refused to apply the hardship theory ('*théorie de l'imprévision*'/'*imprevisieleer*') in case of a change of the circumstances that makes the performance of the constructors' obligation excessively onerous. This principle is applied to a wider range of contracts than those falling within the specific scope of application of Article 1793 of the Civil code.[15],[16] It is also important to bear in mind that this rule (that is, refusal of the hardship theory) does not apply to construction contracts for public works; the public procurement rules (more precisely

---

[13] Article IV.C-2:107(3) DCFR states that 'If the service provider perceives a direction falling under paragraph (1) to be a variation of the contract under IV. C-2:109 (Unilateral variation of the service contract) the service provider must warn the client accordingly. Unless the client then revokes the direction without undue delay, the service provider must follow the direction and the direction has effect as a variation of the contract.'

[14] Lorenz, 1980, 109.

[15] Goossens, 2003, 592.

[16] Moreover, the validity of price escalation provisions is limited because of the rule contained in Art. 57 s. 2 of the 1976 Act concerning economic measures ('*Loi du 30 mars 1976 relative aux mesures de redressement économique*' (Moniteur Belge, 1 Apr. 1976)), which recognizes the validity of price escalations clauses only in so far these clauses (1) are limited to an amount of maximum 80% of the final price and (2) refer to parameters that represent the real costs incurred (costs of materials, wages, energy costs, etc.).

the Royal Decree containing the General Contractual Conditions for the execution of Public Works (GCC)) expressly open a right for the building constructor to ask for a price adjustment even in the case of a change of the economic or financial circumstances.[17]

15. However, Article 1793 of the Civil code does not prevent the building constructor from being entitled to request a price adjustment when confronted with 'technical' conditions unexpected at the time of conclusion of the contract, causing considerable difficulties in the performance of the service and leading to serious disturbance in the balance of the contract. Indeed, in construction law, Belgian courts usually make a difference between a change of the economic or financial circumstances (which cannot lead to any adaptation of the contract, save in administrative contracts[18]), on the one hand, and the discovery of 'technical' conditions unexpected at the time of conclusion of the contract (the so-called '*sujétions imprévues*'/'*onvoorziene omstandigheden*'), on the other hand; of course, no indemnity shall be allowed in cases where the constructor has been negligent and should have foreseen these conditions at the time of conclusion of the contract. This theory of the *sujétions imprévues* has been developed on the model of the rules applicable to public contracts, where the hardship theory is accepted as such; the authorities are under a duty to reimburse the supplementary costs, which are the result of the unexpected arrival of an unforeseen event, provided the damage is material.[19]

16. In short, Belgian law provides for a solution similar to the one adopted in the DCFR, save in the case of a change of the economic or financial circumstances that make the performance of the constructors' obligation more onerous; in this case, the courts continue to refuse the application of the hardship theory to contracts for private works and to give any relief to the building constructors should such a change of circumstances happen.

---

[17] See Art. 16 s. 2 of the General Contractual Conditions for the execution of Public Works ('*Arrêté Royal du 26 septembre 1996 établissant les règles générales d'exécution des marchés publics et des concessions de travaux publics et son annexe le cahier général des charges des marchés publics*' (Moniteur Belge, 18 Oct. 1996)).

[18] See *supra* n. 14.

[19] The remedies offered by Art. 16 of the GCC require the existence of a material loss; the fulfilment of this condition is assessed by the courts. There is authority to say that the constructors' loss becomes material when it exceeds 3% of the total price of the contract (see M.A. Flamme and P. Flamme, *Le contrat d'entreprise. Quinze ans de jurisprudence* (Brussels: Larcier, 1981), 175). Some courts have requested occasionally a higher percentage or accepted a lower percentage provided the nominal amount of the damage is sufficiently material.

2.2 Delivery Procedure

17. The delivery procedure is organized under Article IV.C-3:106 DCFR, which reads as follows:

> (1) If the constructor regards the structure, or any part of it that is fit for independent use, as sufficiently completed and wishes to transfer control over it to the client, the client must accept such control within a reasonable time after being notified. The client may refuse to accept the control when the structure, or the relevant part of it, does not conform to the contract and such non-conformity makes it unfit for use.
> (2) Acceptance by the client of the control over the structure does not relieve the constructor wholly or partially from liability. This rule also applies when the client is under a contractual obligation to inspect, supervise or accept the structure or the construction of it.
> (3) This Article does not apply if, under the contract, control is not to be transferred to the client.

18. Under Belgian law, contrary to the solution provided for in Article IV.C-3:106(2) DCFR, the acceptance implies an acceptance of the work with its visible defects, except those for which written reservation is made at the time of the acceptance (assuming they are not serious enough to refuse the acceptance of the works) and except those that are covered by the so-called decennial liability.[20] In other words, if the client does not adequately inspect the building at the time or before the acceptance, he risks losing his rights relating to visible defects that have not been remedied before the acceptance. Visible non-conformity must be notified at the latest at the time of the acceptance.

19. On the contrary, under Article IV.C-3:106 DCFR, if there is a non-conformity that is or should be discovered by the client, then emerges only the 'duty to notify',

---

[20] About the acceptance of the works under Belgian law, see a.o. B. Kohl, *Droit de la construction et de la promotion immobilière en Europe. Vers une harmonisation de la protection du consommateur en droit de la construction?* (Brussels and Paris: Bruylant and LGDJ, 2008), 131–133; J. Herbots, 'La charnière chronologique des responsabilités des entrepreneurs, architectes et promoteurs', *Revue Critique de Jurisprudence Belge*, 1985, 404; P. Souris, *La réception des ouvrages et des matériaux, Abrégé juridique et pratique* (Bruges: la Charte, 1995); F. Burssens, *De oplevering van bouwwerken*, coll. Advocatenpraktijk – Burgerlijk Recht, no. 5 (Antwerp: Kluwer, 1997); A. Delvaux & T. Beguin, 'La réception de l'ouvrage et ses conséquences juridiques en matière immobilière', *Actualités du droit* (1992), 305.

mentioned in Article IV.C-2:110 DCFR;[21] the client has to give notification in the event that the constructor's non-performance is obvious; however, if the client does not respect his duty to notify the (visible) defects, the latter will not, as under Belgian law,[22] be totally prevented from invoking remedies against the constructor:

> one should keep in mind that the service provider has the prime responsibility for the performance of the duties incumbent on him. The service provider should not be allowed to shift that responsibility to the client, by stating that the latter failed to discover a risk of non-performance of the service provider during the course of the service process. It is thought inefficient to actually impose a duty to investigate on the client. The responsibility of the service provider can *only* be *mitigated* by the non-performance of the client's duty to notify a failure, or a possible risk of failure, to achieve the result he has in mind. This latter duty is only imposed on the client in the event of an obvious failure or of a failure that was actually discovered.[23]

20. Finally, it is worth noting that it remains[24] common practice[25] in Belgium to split the acceptance of the works into a provisional and a final acceptance. The provisional acceptance is the start of the so-called warranty period during which the constructor is under an obligation to repair all defects that appear (save in the case that these defects were visible at the time of the provisional acceptance). This warranty period is usually one year, but the parties are free to agree on a shorter or longer period depending on the size and complexity of the works. The final acceptance is

---

[21] Article IV.C-2:110 DCFR: '(1) The client must notify the service provider if the client becomes aware during the period for performance of the service that the service provider will fail to perform the obligation under IV.C-2:106 (Obligation to achieve result). (2) The client is presumed to be so aware if from all the facts and circumstances known to the client without investigation the client has reason to be so aware. (3) If a non-performance of the obligation under paragraph (1) causes the service to become more expensive or to take more time than agreed on in the contract, the service provider is entitled to: (a) damages for the loss the service provider sustains as a consequence of that failure; and (b) an adjustment of the time allowed for performance of the service.'

[22] With exception for the visible defects that are covered by the so-called decennial liability (see *infra* no. 25–30).

[23] Barendrecht, et al, 2007, 281. However, failure to notify the (visible) defect could prevent the client enforcing specific performance, if the conditions of Art. III-3:302(4) DCFR are met ('The creditor loses the right to enforce specific performance if performance is not requested within a reasonable time after the creditor has become, or could reasonably be expected to have become, aware of the non-performance'). Moreover, as explained above, given the client's failure to notify, his/her claim for damages might be reduced in application of Art. III-3:705 DCFR ('(1) The debtor is not liable for loss suffered by the creditor to the extent that the creditor could have reduced the loss by taking reasonable steps... ').

[24] Different from France where the acceptance is now a single-step procedure.

[25] The Civil code does not require this two-step acceptance.

granted if at the end of the warranty period, all the visible defects about which a reservation was made at the provisional acceptance, as well as all hidden defects that appeared during the warranty period, have been redressed. It is very common for the parties to agree that the provisional acceptance shall be the starting point of the period during which the constructor is liable for hidden defects and of the decennial liability period.[26] For defects about which a reservation was made at the acceptance, the (post-contract) liability periods do not start to run until they have been redressed.

2.3 Burden of Proof

21. The DCFR opted for the 'fitness for purpose' criterion, regarding the quality assessment of the immovable structure built by a constructor. Article IV.C-3:104 DCFR clearly states:

> (1) The constructor must ensure that the structure is of the quality and description required by the contract. Where more than one structure is to be made, the quantity also must be in conformity with the contract.
> (2) The structure does not conform to the contract unless it is:
> (a) fit for any particular purpose expressly or impliedly made known to the constructor at the time of the conclusion of the contract or at the time of any variation in accordance with IV.C.–2:109 (Unilateral variation of the service contract) pertaining to the issue in question; and
> (b) fit for the particular purpose or purposes for which a structure of the same description would ordinarily be used.
> (3) The client is not entitled to invoke a remedy for non-conformity if a direction provided by the client under IV.C.-2:107 (Directions of the client) is the cause of the non-conformity and the constructor performed the obligation to warn pursuant to IV.C.-2:108 (Contractual obligation of the service provider to warn.

---

[26] This rule is mandatory in public work contracts. In private works contracts, it remains uncertain if the starting point of the decennial liability period is the provisional or the final acceptance (save in the case where the parties have agreed on this point); the Supreme Court held that the starting point of the decennial liability period is the (acceptance), which is the definitive acceptance if the parties have not agreed upon otherwise (Cass., 4 Mar. 1977, *Journal des Tribunaux* (1977), 621; Cass., 5 Jun. 1980, *Pasicrisie* 1980, I, 1222; Cass., 24 Feb. 1983, *Journal des Tribunaux* (1983), 575); see also H. De Page, *Traité élémentaire de droit civil belge*, Vol. IV, 3rd edn (Brussels: Bruylant, 1972), no. 885; Simont, De Gavre, & Foriers, 1999, 798. However, one can observe a recent tendency in the legal doctrine as well as in the courts' decisions to contest this point of view; see a.o. Flamme et al., 2001, 211.

22. In other words, the principle is that 'the final outcome of the construction process (the structure) should be fit for its purpose or – which amounts to the same thing – should not contain defects'.[27] When the structure is not fit for its purpose, the constructor will have to prove that the cause thereof was beyond his control. This solution integrates the approach adopted in France and in Germany, where the principle of perfect final result is accepted:

> the occurrence of a quality problem gives rise to the presumption that the builder violated his obligation to materialise the building work in accordance with the principle of perfect final result. He will be able to relieve himself from legal consequences resulting from the occurrence of the quality problem by demonstrating that circumstances which might justify such relief exist.[28]

23. The traditional rule in Belgium is somewhat different, at least in traditional construction processes. Case law and legal doctrine recognize that a constructor is under an '*obligation de moyen*', not an '*obligation de résultat*'; the constructor will be liable for defects (even for the defects that could affect the stability of the building and that are covered by the so-called 'decennial liability'), if he can be shown to have committed negligent or incompetent acts that a reasonable constructor, placed under the same conditions, would not have done.[29] In the field of traditional construction law, it is generally accepted that the parties did not promise each other to achieve a particular result but simply to use due diligence.[30] As Jansen correctly explains, this refusal to accept, in traditional construction processes, that an obligation to produce a 'materialized' building work in accordance with the principle of perfect final result should be imposed upon the constructor, is generally explained by the limitation of the constructor's freedom of choice by means of specification and communication of considerable quantity requirements by or on behalf of the client (with regard to the selection and processing of goods).[31]

24. Belgian law and the DCFR only differ regarding what Jansen calls the 'traditional construction process'. Indeed, when the constructor is considered as having a significant influence on the final result of the construction process, case law

---

[27] See Barendrecht, et al, 2007, 343.

[28] C.E.C. Jansen, Towards a European Building Contract Law (Deventer: W.E.J. Tjeenk Willink, 1998), 355.

[29] See H. Bocken & W. de Bondt, *Introduction to Belgian Law* (Brussels and The Hague: Bruylant and Kluwer Law International, 2001), 236.

[30] See Cass. 15 Dec. 1995, *l'Entreprise et le droit*, 1997, 177. See also Kohl, 2008, 138–139; A. Delvaux & J.N. Kraewinkels, 'Questions actuelles du droit de la construction', in *Droit de la construction*, coll. Formation Permanente Commission Université Palais, vol. XII (Liège: C.U.P. Publ., 1996), 37, at 104.

[31] See Jansen, 271.

generally imposes on him an '*obligation de résultat*', that is, an obligation to produce a particular result (a structure that is 'fit for purpose', to follow the wording of Article IV.C-3:104(2) DCFR). This will be the case when the constructor not only contracts for the materialization of the building works but also takes responsibility for some of the conception tasks relating to the construction of the structure,[32] when the constructor is a promoter, specially in the housing construction sector, or when the constructor is specialized in the conception or the materialization of specific building technology.[33] In other words, a not insignificant number of Belgian constructors have to guarantee the fitness for purpose of the structure and will be liable unless they are able to prove that the cause of the defects was beyond their control; the burden of proof shifts then from the client to the contractor. Therefore, for these contractors, the solution provided for by the DCFR does not lead to any change of their situation.

2.4 Liability for Hidden Defects: Prescription

25. Under the DCFR, the general period of prescription is three years (Article III-7:201 DCFR). In application of the rule contained in Article III-7:203(1) DCFR ('The general period of prescription begins to run from the time when the debtor has to effect performance or, in the case of a right to damages, from the time of the act which gives rise to the right'), the period of prescription runs from the time that the control over the structure, or part of it, is handed over to the client in accordance with Article IV.C-3:106 DCFR. If the defect is hidden, the running of the period of prescription is suspended as long as the client does not know of, and could not reasonably know of, the facts giving rise to the claim, including, in the case of a right to damages, the type of damage (Article III-7:301 DCFR).[34] Finally, in accordance with Article III-7:307 DCFR, 'the period of prescription cannot be extended, by suspension of its running or postponement of its expiry under this chapter, to more than

---

[32] The opportunity for the constructors to undertake conception tasks is, however, limited in Belgium because of the wide monopoly that is granted to the architect (following Art. 4 of the 1939 Act on Protection of the Title and Profession of Architects). Regarding the regulation of the profession of architect in Belgium, see a.o. J.F. Henrotte, L.O. Henrotte, & B. Devos, *L'architecte. Contraintes actuelles et statut de la profession en droit belge* (Brussels: Larcier, 2008), 43–53; S. van Gulijk, *European Architect Law. Towards a new Design* (Appeldoorn/Antwerp: Maklu, 2008), 35–37; B. Kohl, 'Aspects récents des conditions d'exercice de la profession d'architecte', *in Droit de la construction* (Liège: Jeune Barreau Publ., 2006), 7–44. Notwithstanding this monopoly, 'it is generally accepted that specialists (engineers...) may be charged with technical issues, such as concrete solution studies or calculations concerning the material's structure' (van Gulijk, 2008, 36).

[33] Kohl, 2008, 139.

[34] See Art. III-7:301 DCFR ('The running of the period of prescription is suspended as long as the creditor does not know of, and could not reasonably be expected to know of: (a) the identity of the debtor; or (b) the facts giving rise to the right including, in the case of a right to damages, the type of damage').

ten years or, in case of rights to damages for personal injuries, to more than thirty years…'.

26. In Belgium, as mentioned above, the liability for minor (that is, all defects that are not subject to decennial liability) visible defects ends at the time of the (provisional or final, as the case may be) acceptance of the works, if the client has not made a reservation about them in the 'minutes of acceptance'. The constructor is liable for minor hidden defects during maximum ten years following the acceptance.[35] However, the client must lodge his action for minor hidden defects within a 'reasonable' period of time following their discovery. This latter obligation is not expressly mentioned in the Civil code but results from a decision of the *Cour de cassation* of 15 September 1994.[36] This rule could reconcile Belgian law with the solution resulting from the cumulative application of Article III-7:201 DCFR and Article III-7:301 DCFR, at least regarding the liability for minor hidden defects. Depending on the circumstances of the case, it is not certain, however, that a Belgian judge will always consider a period of three years (Article III-7:201 DCFR) as being automatically a 'reasonable' period of time in the light of the judgement of the *Cour de cassation* of 15 September 1994.

27. In addition, as in French law, the constructor (as well as the architect) is specifically liable for the stability of the finished building during ten years (Articles 1792 and 2270 of the Civil code) following the acceptance. In public works contracts, this period mandatorily starts at the time of the provisional acceptance. In private construction contracts, the parties may agree that it commences on the date of the provisional acceptance ('*réception provisoire*'/'*voorlopige oplevering*') or on the date of the final acceptance ('*réception définitive*'/'*definitieve oplevering*').[37] Although the liability periods for both minor hidden defects and for stability problems are thus ten years, they are not to be confused. The liability for minor hidden defects was initially not provided by law; the acceptance of the work was considered to cover not only the visible minor defects but also the hidden minor defects and liability of the constructor after the acceptance was thus limited to stability problems or the so-called 'decennial liability'; the liability for minor hidden defects has gradually been acknowledged by the courts, but unless the parties had explicitly agreed on its duration, there was uncertainty on this aspect.

---

[35] Article 2262*bis* Civil code.

[36] Cass., 15 Sep. 1994, *Rechtskundig Weekblad* 1995–1996, 454.

[37] It is, however, possible by contract to make the decennial liability run from the time of the provisional acceptance.

28. The present ten-year liability for minor hidden defects is a maximum period. Constructors tend to negotiate shorter terms and the client is in any case required to bring his action within a short period following the discovery of the damage. It is also possible for the constructor to limit his contractual liability for minor (hidden) defects (or delay in performance).[38] Conversely, the so-called 'decennial liability', which exists for defects affecting the stability of the works, is a statutory liability that cannot be shortened by the parties. The term can only be extended by agreement (but this seldom happens). Any clause that limits the constructor's decennial liability is void. This is a consequence of the fact that the decennial liability for the stability of the works (Article 1792 of the Civil code) is a part of Belgian public policy; it can therefore be neither excluded nor limited. Article III-7:601 DCFR provides for the opposite solution: '(1) The requirements for prescription may be modified by agreement between the parties, in particular by either shortening or lengthening the periods of prescription. (2) The period of prescription may not, however, be reduced to less than one year or extended to more than thirty years after the moment of commencement set out in III-7:203 (Commencement)'. Such a deviation, in so far as it would reduce the client's rights in relation with the decennial liability, shall not be acceptable under Belgian law.

---

[38] Exclusions or limitations of the constructor's contractual liability for minor (hidden) defects are subject to the general rules on validity of liability clauses, which the courts have developed. The Belgian Civil code does not contain any provision directly concerning the limitation or exclusion of liability. Article 1226 of the Belgian Civil code relates to liquidated damages clauses; it provides that the parties may fix in advance the amount of damage in the contract. If this amount exceeds considerably the loss of the creditor as it could reasonably be estimated at the time of the conclusion of the contract, the Court has the power to reduce this amount. However, it is not possible for the creditor to claim a larger amount when the loss exceeds the amount fixed in the contract. In such a case, the liquidated damages clause has the same effect as a limitation of liability clause. Its validity will be assessed as it were a limitation of liability clause (see a.o. E. Montero, 'Les clauses limitatives ou exonératoires de responsabilité', in G. Viney & M. Fontaine (eds), *Les sanctions de l'inexécution des obligations contractuelles* (Brussels: Bruylant, 2001), 398). A limitation of liability clause will not be upheld (1) in case of fraud or deliberate default ('*dol*') (however, a constructor can limit his liability for gross negligence ('*faute lourde*') (Cass., 25 Apr. 1958, *Pasicrisie* 1958, I, 944; 27 Jan. 1995, *Pasicrisie* 1995, I, 92), provided it has been mentioned expressly in the contract (Cass., 22 Mar. 1979, *Pasicrisie* 1979, I, 863) and for fraud, deliberate default, or gross negligence committed by his subcontractors or his workers (Cass., 28 Jun. 1928, *Pasicrisie* 1928, I, 211; 25 Sep. 1959, *Pasicrisie* 1960, I, 113; this solution is controversial; see B. Dubuisson, 'Les clauses limitatives ou exonératoires de responsabilité ou de garantie en droit belge', in P. Wéry, *Les clauses applicables en cas d'inexécution des obligations contractuelles* (Bruges: la Charte, 2001), 62); (2) if the application of the clause would lead to suppressing all the constructor's duties, it is not possible to commit oneself to perform certain contractual duties and, at the same time, to pass off all these duties by way of a limitation of liability clause (Cass., 25 Sep. 1959, *Pasicrisie* 1960, I, 113; 23 Nov. 1987, *Pasicrisie* 1988, I, 347; 27 Sep. 1990, *Pasicrisie* 1990, I, 821) and (3) in consumer construction contracts, under certain conditions.

29. Finally, as explained above, during the decennial liability period, the client can sue up until the last day of the term, no matter when he discovered the defect affecting the stability (subject of course to problems of evidence if the defect exists since a long time). Indeed, it was recently held by the *Cour de cassation* that the ten-year limitation period cannot be shortened, even when the client perfectly knows the facts giving rise to the claim; in other words, the duty to lodge the action within a 'reasonable' period of time following the discovery of the defects does not apply in the case of defects that are subject to the decennial liability.[39] This rule also clearly clashes with Article III-7:201 DCFR.

30. As Jansen already observed in 1998:

> as regards limitation periods relating to claims involving quality problems, it is concluded that the differences between the various legal cultures are substantial.... One might argue that differing limitation periods raise an important obstacle to establishing common European principles.... However, in my opinion, it has to be noted that the various national limitation periods as discussed above are all rather arbitrary. They do not appear to be based on profound legal reasoning: protecting initiators is a rather extensive notion when it boils down to the limitation issue. Whenever legal cultures hold differing views as regards the solution to be adopted in case of a particular problem of legal interest, compromises have to be found if one seeks to establish common European principles.[40]

The drafters of the DCFR have tried to reach such a compromise solution. The attempt is fruitful, and the solutions proposed seem to be well balanced. However, given the strong national traditions regarding the limitation periods relating to claims for defects (but also regarding the public policy nature of the liability in several countries), the way towards an effective implementation of the reasonable solutions provided for in the DCFR remains full of traps.

3. Consumer Construction Law in Belgium: The 'Breyne' Act

31. The DCFR does not contain any specific provision in relation to the protection of the consumers of construction services.[41] However, any overview of Belgian

---

[39] Cass., 2 Feb. 2006, *Nieuw juridisch Weekblad*, 2006, 218.

[40] Jansen, 337.

[41] Several articles of the DCFR relate to the consumer protection; see for instance Book II Chapter 3 ('Marketing and pre-contractual duties'), Book II Ch. 5 ('Right of withdrawal'), Book II Ch. 9 s. 4 ('Unfair terms') as well as some articles of Book IV.A ('Sale'), in relation with consumer sales (specially Ch. 4: 'Consumer goods guarantee') and some articles of Book IV.B ('Lease'), in relation with

construction law would not be complete without a description of the specific rules that apply to the contracts with consumers for the construction of private houses or apartments or to the contracts for the sale of such houses or apartments before or during the course of their construction. Indeed, these rules form an important part of Belgian construction law nowadays.

32. The sole purpose of this section is to briefly present how the consumers' interests are protected in Belgium under the so-called 'Breyne' Act. Indeed, this Act constitutes the main source of legal protection for the consumers in the field of construction law.

33. The construction of dwellings and the acquisition of dwellings under construction are governed in Belgium by the 'Breyne' Act 1971 (amended by an Act of 3 May 1993), which has been adopted in order to provide better protection and more guarantees for the consumer.[42] This law applies to any agreement that relates either to the transfer of ownership (such as sale agreements) or to the construction or the management of a construction project. The building must be constructed either exclusively for housing purposes or partly for housing and partly for professional purposes.[43] Article 1 of the 'Breyne' Act provides that only buildings to be constructed or still under construction fall within its scope of application. This implies that this law shall not be applied to the sale of newly built (that is, completed) houses or flats. 'A building will be deemed completed if the purchaser can make normal use of it. In other words, the fact that certain minimal finishing works

---

consumer contracts for the lease of goods. However, Book IV.C ('Service contracts') does not contain such provisions.

[42] About the Breyne Act, see. a.o. Kohl, 2008, 148–154; B. Kohl, 'Woningbouwwet. Rechtspraakkroniek 2000-2006', in K. Deketelaere & A. Verbeke, *Jaarboek Bouwrecht 2005–2006* (Bruges, die Keure, 2006), 155; B. Kohl, 'La loi Breyne', in *La vente. Commentaire pratique* (Waterloo: Kluwer, 2008); D. Meulemans, 'De Woningbouwwet. Bespreking van de Wet van 9 juli 1971 zoals gewijzigd bij de Wet van 3 mei 1993', in *Liber Amicorum Paul De Vroede*, Diegem, Kluwer, 1994, 1085; M. Devroey, *De wet Breyne* (Lokeren: Konstruktieve Publicaties, 2000); I. Van Bael & J.F. Bellis, *Business Law Guide to Belgium*, 2nd edn (The Hague: Kluwer Law International, 2003), 674–676; A. Renard, 'La loi du 3 mai 1993 modifiant la loi du 9 juillet 1971 réglementant la construction d'habitations et la vente d'habitations à construire ou en voie de construction : la réforme de la loi Breyne', *L'enterprise et le droit*, (1994), 112; L. Rousseau, *La loi Breyne* (Diegem: Kluwer), 2005; A. Verbeke & K. Vanhove, *De Wet Breyne Sans Gêne*, coll. Bibliotheek Burgerlijk Recht (Brussels: Larcier, 2003); K. Uytterhoeven, 'Woningbouwwet', in K. Deketelaere, M. Schoups, and A. Verbeke, *Handboek Bouwrecht* (Brugge and Antwerp: die Keure and Intersentia, 2004), 497; J.M. Chandelle, *La loi Breyne (loi du 9 juillet 1971 réglementant la construction d'habitations et la vente d'habitations à construire) – après la réforme de 1993*, Coll. Répertoire Notarial, Book VII-6 (Brussels: Larcier, 1996).

[43] If the building is to be used for professional purposes, the part that will be used for housing must at least be of equal importance to that which will be put to professional use.

may still have to be performed does not necessarily prevent the building from being deemed completed'.[44] Moreover, the contract shall be governed by the Breyne Act only insofar the consumer is obliged to make one or several down payments before the completion of the works.[45]

34. The agreements subject to the Breyne Act must comply with the following formal requirements (Article 7 the Breyne Act)[46]: (1) the agreement must be in writing; (2) the agreement must contain several clauses the aim of which is to provide accurate information to the consumer (among other things information about the identity of the owner of the land, the date of the construction permit, the description of the building, the total price and the method of payment, whether there is a condition precedent to the entry in force of the contract, the term within which the works have to be completed and the penalty in case of delay, the procedure relating to the completion, and so forth); (3) detailed plans and related documents signed by an architect and, in the case of apartments, the notarial deed including the regulation governing the co-ownership, must be annexed to the agreement. At the time of the signature of the preliminary sale contract (if any), a down payment of 5% of the purchase price can be requested by the seller.[47] At the time of the signature of the notarial deed, the seller can request the payment of the price for the plot of land and the value of the state of the building as already erected; this value of the state of the house or of the apartment must be approved by an architect, whose opinion and approval must be attached to the notarial deed. The balance of the purchase price shall be paid in instalments according to the state of progress of the construction (Article 10 of the Breyne Act). This price may be revised, but the method for revising of the construction price is strictly controlled.

---

[44] Van Bael & Bellis, 2003, 673.

[45] 'Even if the aforesaid conditions are all met, the Breyne Act will not be applied to agreements entered into by the following parties: (i) certain social housing companies (Art. 2, 1); (ii) municipalities or inter-municipal associations (Art. 2, 2); (iii) a purchase or promoter whose regular activities consist of constructing housing or conducting management projects and the subsequent resale of the building concerned (for example real-estate promoters or building constructors) (Art. 2, 3). Likewise, the Breyne Act will not apply to mere studies relating to construction works (Art. 2, 3), insofar as the cost of such study does not exceed 2 per cent of the estimated construction cost and if the study agreement contains a description of the pertaining construction works and allows for a 7-days reflection period on behalf of the acquiror' (Van Bael & Bellis, 2003, 674).

[46] See a.o. Kohl, 2008, 388-392; Verbeke & Vanhove, 2003, 28-30; Van Bael & Bellis, 2003, 675; K. Uytterhoeven, 2004, 505-507.

[47] This rule can lead to some difficulties for the building constructors or promoters to finance adequately their real estate projects (see B. Kohl & R. Vermeersch, 'Financiering en commercialisatie van bouwprojecten onder de Wet-Breyne: capita selecta' *Tijdschrift voor Bouwrecht en Onroerend recht* (2008), 2).

35. The procedure for the acceptance of the works is strictly organized by the Breyne Act (Article 9). One year after the provisional acceptance, the final acceptance of the house or of the apartment must be done. This means that the buildings are fully completed in compliance with the terms and conditions of the agreement and that all minor defects and all defects that appeared during this year have been repaired. The reason why there has to be one year between the provisional and the final completion is to allow the new owner to check his house or his apartment during at least one winter.[48] After the final completion certificate is delivered, only a claim related to hidden defects can be introduced.

36. An important provision of the Breyne Act is its Article 12, which obliges the builder or the promoter to provide the client with certain financial guarantees. Indeed, the builder (or the promoter) has to establish a bank guarantee at the beginning of the construction that covers full completion of the building. If the builder (or the promoter) is declared bankrupt during the construction, the amount guaranteed by the bank shall be used for the completion of the works. If the builder (or the promoter) is a 'non-approved' constructor,[49] the bank guarantee shall cover 100% of the execution of the works and shall be released in full at the time of the provisional acceptance. If, however, the builder (or the promoter) is an 'approved' constructor, the bank guarantee shall cover only 5% of the execution of the works and shall be released for 50% at the provisional acceptance and for 50% at the final acceptance.[50]

37. Finally, the Breyne Act provides for two different kinds of sanctions. Failure to comply with the conditions of the Breyne Act entitles the client to claim the nullity of the clause concerned[51]; this claim must be brought either prior the date on which the notarial deed is signed or, in the case of a construction agreement, prior to the provisional acceptance of the works. Moreover, if the builder or the promoter

---

48 See Devroey, 2000, 92.

49 That is, if this builder is not certified according to the laws governing the performance of public works.

50 This distinction between the (approved) and (non-approved) builders and promoters has led to many critical comments. See a.o. Devroey, 2000, 122 (*'het blijkt evenwel dat de erkenningsreglementering, zeker voor de aannemers die erkend zijn in klasse 1 (...) geen garantie biedt i.v.m. hun technische bekwaamheid en financiële draagkracht. Ook voor de hogere klassen zijn de criteria afgezwakt (...)*'); L. Barnich, 'La loi Breyne et la garantie de l'entrepreneur agréé', *Revue du notariat* (1996), 298, at 309 ('*On peut regretter que la loi favorise trop l'entrepreneur agréé et que la garantie exigée de ce dernier ne soit pas sérieuse, ni suffisante pour protéger l'acquéreur* ') ; Verbeke & Vanhove, 2003, 63 ('*het onderscheid tussen erkende en niet-erkende aannemers ter zake de waarbogregeling in de Woningbouwwet is o.i. thans niet meer redelijk te verantwoorden en disproportioneel* ').

51 In case of a failure to comply with the formal requirements of Art. 7, or with the requirement to provide a guarantee, the consumer may also claim the nullity of the agreement as a whole.

infringes the rules governing the payment of the price (Article 10), he may incur criminal liability.

4. Towards a European Consumer Construction Law?

38. Close to the general rules of construction law, such as the rules that form the core subject of Chapter IV.C-3 of the DCFR, some countries of the European Union have developed specific rules in order to provide for a specific protection of the consumers' interests in the construction sector. For instance, as seen above, the so-called '*Loi Breyne*' gives in Belgium a wide range of protection to the individuals in the house building industry.

39. Belgium is far from being an exception. Indeed, several mechanisms have been put in place, in numerous countries, to ensure a specific protection to those who call on professionals when the building to be constructed is destined to be a home.[52] This protection finds its justification in the fact that there is an imbalance between the 'average' citizen and the professional, because constructors or promoters are often able to impose their contractual conditions on the client, who is presumed not to be able to protect his own interests.[53] But there is also an imbalance because it is often the client who ensures the 'pre-financing' of the building; well before the structure starts to resemble a 'cosy nest', the client is obliged to 'pay to see'[54] the walls rise from out of the ground, with all the risks that entail in the development of the building site: delays in the work, the business going bankrupt, an unfinished building when there is an urgent need to move in, and so forth. As Oughton and J. Lowry explain, 'the building trade is notorious for a high risk of business failure, which may leave the consumer who has made a prepayment in the position of a unsecured creditor and with no discernible benefit on his hands'[55]

---

[52] See, for instance, in France, the '*Code de la Construction et de l'Habitation*'; it contains several provisions that aim to increase the consumer protection in the field of construction law. In The Netherlands, the '*Nieuw Burgerlijk Wetboek*' has been introduced by a Statute dated 5 Jun. 2003, providing new provisions relating to the service contract and the sale of real property, with specific attention to the consumer's interests. In Germany, the '*Makler-und Bauträgerverdnung (MaBV)*' tries to fight the risk of insolvency of the promoters. Finally, the Italian parliament recently enacted a Law dated 2 Aug. 2004 '*Disposizioni per la tutela dei diritti patrimoniali degli acquirenti di immobili da costruire*', giving further protection to the buyer of properties to be built by promoters.

[53] See, in England, the Law Commission's view in its report on *Civil Liability of Vendors and Lessors of Defective Premises* (Law Commission, *Civil Liability of Vendors and Lessors of Defective Premises*, Working Paper no. 40 (London: HMSO, 1970).

[54] This expression is from J.M. Forestier, 'Droit pénal de la construction au stade de la commercialisation', *Revue de droit immobilier* (2001), 471.

[55] D. Oughton & J. Lowry, *Textbook on Consumer Law*, 2nd edn (London: Blackstone, 2000), 263. See also the following comments by the *Office of Fair Trading*: '... payment in advance for work to be undertaken can be followed by the disappearance of the supplier before the work is started or completed or the trader may become insolvent and go into liquidation before the work is completed.

40. Building law in the residential sector is tending to become more 'consumerized'. In other words, as a result of the inferior position in which individuals generally find themselves in their contractual relations with building professionals or promoters, there is a growing tendency to consider these individuals as building 'consumers' and to offer them some of the protection existing in favour of other consumers in general. The 'consumerization' of property ownership has increased further as European populations become more mobile and move more often. The consequence of this is that in the eyes of these growing numbers of 'semi-nomads', the building they live in is no longer only an element of their heritage but sometimes assumes the simple function of providing an accommodation space.[56] For a European lawyer, these observations necessarily lead to asking questions about a possible harmonization of building law, as consumer protection falls now within the scope of the European Union's autonomous legislative competence.[57]

41. Therefore, if there is a need for European action regarding the unification of the law applicable to construction contracts in Europe, perhaps would it be useful to commence community action in the field of construction law by focusing on the specific interests of private consumers rather than on the harmonization of European general principles for construction law.[58] The idea is that if the European Union wants to commit itself to the path of harmonizing building law, why not choose to use consumer law as a 'Trojan horse' in order to penetrate Europe's construction laws? Instead of comparing the basic principles of building law between the different

---

Householders should recognise the possible risks of making payments in advance, before satisfactory completion of the work, which may not be related to any actual costs incurred. They should always approach requests for payment in advance with healthy scepticism and, before agreeing to payment, should satisfy themselves, first that the trader concerned has an established business, secondly, that the advance payment is reasonably related to costs which the trader may be expected to have incurred, and thirdly, that there is every likelihood of the contract being completed' (Office of Fair Trading, *Home Improvements. A Discussion Paper* (London: O.F.T. Publ., 1982), s. 3.22).

56 See E. Gavin-Millan, *Essai d'une théorie générale des contrats spéciaux de la promotion immobilière* (Paris: L.G.D.J., 2003), 202.

57 See specially Art. 153 s. 1 of the consolidated version of the EC Treaty: 'In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.' About the European Union's legislative competence in the field of consumer law, see a.o. S. Vigneron-Maggio-Aprile, *L'information des consommateurs en droit européen et en droit suisse de la consommation*, coll. Etudes de droit de la consommation, vol. 11 (Brussels and Geneva: Bruylant and Schulthess, 2006), 55; J. Stuyck, 'European Consumer Law after the Treaty of Amsterdam: Consumer Policy in or beyond the Internal Market', *Common Market Law Review* (2000), 366, at 377.

58 See Kohl, 2008, 53–56.

European countries, whose harmonization can hardly be envisaged in the short term, I would suggest highlighting the points of convergence and difference between the protection measures from which the different European consumers already benefit in their relations with building trade professionals. This would not be the first time that the European Union would have used the path and methodology that I advocate. The general aim of consumer protection has been used several times as the 'Trojan horse' by which the European legislator entered civil law.[59] For instance, the recent Directive (1999/44) on consumer sales has been implemented without the need for general harmonization of the contract of sale, and it is suggested that, along with the other set of Directives in its neighbouring areas (such as the Unfair Contract Terms Directive and the Directives on marketing techniques), this global '*acquis communautaire*' built from specific areas has to be taken as a starting point in elaborating a European Code for the Contract of Sale.[60]

42. Limiting the scope of the harmonization in the field of construction law seems to be not only *desirable* but also more easily *feasible* in the short or medium term.

43. First, harmonization of consumer construction law seems *desirable*, as the sometimes large disparities that appear from one country to another are sources of insecurity and many other disadvantages.

44. These problems have been pointed in a Resolution of the European Parliament dated 14 September 1989, following a report that highlighted the problems faced by consumers entering into cross-border real estate transactions. The Parliament's Resolution invited the European Commission to draft a proposal for a directive that would aim at increasing consumer protection in the field of real estate transactions.[61] The focus on consumer protection has already been suggested by the European authorities also in the field of construction law. In 1989, Ir. Mathurin, in his 'Study of responsibilities, guarantees and insurance in the construction industry with a view to harmonisation at Community level' (coordinated by and under the aegis of the European Commission), already explained that if a legal common system has to be set up in the field of the construction industry, this system should give

---

[59] This expression is from B. Tilleman & B. Du Laing, 'Directives on Consumer Protection as a Suitable Means of Obtaining a (More) Unified Contract Law?', in S. Grundmann & J. Stuyck (eds), *An Academic Green Paper on European Contract Law* (The Hague: Kluwer Law International, 2002), 81, at 82.

[60] See Tilleman & Du Laing, 2002, 81, at 82; S. Grundmann, 'The Optional Code on the Basis of the *Acquis Communautaire*. Starting Point and Trends', *European Law Journal* (2004), 698, at 710.

[61] See European Parliament, Committee on Petitions, *Resolution on transfrontier property transactions*, OJ, C 256, 9 Oct. 1989, 125.

priority to consumer protection.[62] These propositions were never followed by the preparation of any legislative or statutory act by the Commission.[63]

45. Nevertheless, the debate around harmonization of some aspects of consumer law in the field of real property and construction law stays topical. This debate has been relaunched since 2002, now particularly in view of the reform and modernization of restrictive regulation in the professional legal services area. An in-depth comparative study was carried out in 2007, raising a host of issues about the current regulation of the conveyancing services market, and especially the regulation of the so-called Latin notary profession (for example, fixed prices and *numerus clausus*), the mandatory involvement of certain professionals in conveyancing, and their exclusive rights in this field. This study has shown 'that consumer welfare is enhanced under deregulated systems and highly regulated Latin notary systems with fixed prices and *numerus clausus* can be singled out for special criticism as they result in significant consumer detriment in the form of higher prices, without any comparable quality gains'.[64] [65]

46. The desirability of the harmonization of consumer construction law also results from the (slow) emergence of cross-border transactions in that field. In each country, several promoters in the 'house construction industry' have activities at national level and offer new houses to consumers up and down the country; some of these have already crossed borders and developed their activities in other countries of the European Union. Conversely, it is becoming more and more common to see

---

[62] '*si un système juridique commun est mis en place pour encadrer la production d'ouvrages de construction, il doit donner la priorité à la protection du consommateur*' (C. Mathurin, 1989, 39 *sub* I). The Commission itself adopted the same point of view in 1990 (European Commission, *Possible action to be taken on the study of responsibilities guarantees and insurances in the construction industry with a view to harmonisation at Community level*, Brussels, Comm. III/3750/90-EN, 7). See also V. Van Houtte, 'The Impact of Europe upon the Construction Industry', *International Construction Law Review* (1991), 209.

[63] Yet a reminder was placed in 1994, by way of a written question (no. 2419/94) asked by A. André-Léonard to the Commission about consumer protection and property transactions (OJ, C 36, 13 Feb. 1995), 60.

[64] C.U. Schmid (coord.), *Study COMP/D3/003. Conveyancing Services Market* (Bremen: Centre of European Law and Politics (ZERP) Publ., 2007), 17–18 <www.ec.europa.eu/competition/sectors/professional_services/ studies/csm_study_complete.pdf>.

[65] In January 2007, a petition was also lodged with the Committee on Petitions of the European Parliament on the need to protect property rights in the European Union and the Western Balkans (Petition 0665/2006). The petitioner argued that property rights and certainty of property ownership are intrinsic to any effort to consolidate democracy and build a functioning market economy and that legitimately acquired property that has been illegitimately confiscated by arbitrary and unilateral decisions should be returned to rightful owners either as they remain or in the form of compensation (see European Parliament, Committee on Petitions, *Minutes of Meetings 30 Jan. 2007*, Doc no. PETI_PV2007-143, p. 13).

consumers (especially those working in border areas) going into cross-border transactions in the field of property sales. A considerable part of these transactions concerns the purchase of new homes.[66]

47. Second, such harmonization of consumer construction law seems to be more *feasible* in the short or medium term.

48. Indeed, more and more objections are being raised in Europe against the idea of a global and mandatory harmonization of European private law. Such harmonization would go far beyond the needs of business to help facilitate the implementation of a competitive Internal Market in Europe; moreover, the institutions of the European Union would not be designed to engage in the construction of the necessary political settlement that would constitute a European Civil code. It is therefore argued that a transnational code would not solve the problems of market integration and might even exacerbate them.[67] In short, as explained by M. Loos, the 'c-word' ('c' for 'code') seems to have become a taboo subject within the circles of the European Commission.[68] The adoption of a European Civil code as a mandatory instrument for the harmonization of private law seems then to be postponed *sine die*. The current debate around the DCFR does not modify this observation. Indeed, it is expressly explained in the introduction to this 'Draft Common Frame of Reference' that:

> it is still unclear whether or not the [Common Frame of Reference], or parts of it, might at a later stage be used as the basis for an optional instrument, i.e., as the basis for an additional set of legal rules that parties might choose to govern their mutual rights and obligations. In the view of the two Groups such an optional instrument would open attractive perspectives, not least for consumer transactions. A more detailed discussion of this issue, however, seems *premature* at this stage.[69]

49. Which route should be taken in order to attain the harmonization of consumer construction law? It is worth observing that where certain countries (or juridical systems) have committed themselves to regulating consumer protection in

---

[66] See recently D. Lhomme, 'Le projet de directive services, la liberté de prestation de services et le secteur de la construction: réflexion sur une relation désordonnée ?', in M. Défossez, et al. (eds), *Journée franco-belge sur les opérations transfrontalières de construction. Regards sur la liberté de prestation de services* (Brussels: Larcier, 2007), 195, at 219.

[67] See H. Collins, 'Editorial: The Future of European Private Law: an Introduction', *European Law Journal* (2004), 649.

[68] M. Loos, *Spontane harmonisatie in het contracten – en consumentenrecht* (The Hague: Boom Juridische Uitgevers, 2006), 31.

[69] von Bar, Clive, & Schulte-Nölke, 2009, 49.

the area of construction very precisely, through binding rules and regulations, others place complete confidence in the sector to grant consumers comparable levels of protection. I consider that such soft law systems (regulation adopted by the sector itself, and not by the authorities) should be considered and have a place in the European harmonization of consumer protection measures in the housing construction sector.

50. However, such a method, only based on the voluntary action of the sector, could hardly be used on its own for consumer protection harmonization in the housing construction sector.[70] In effect, soft law has no value if traders are not forced to engage in a meaningful dialogue with consumers. As Howells writes, 'It is often suggested that this means that industry must be aware that legislation will ensue should the soft law approach be ineffective. However, better still, soft law rules should be developed within a legislative framework'.[71] I agree with his view that soft law should always be subsidiary to legislative principles,[72] at least when dealing with consumer protection. This is particularly the case in the housing construction sector, where I can hardly see the French authorities accepting a purely soft law harmonization, considering the extreme level of regulation reached in France in this area. But self-regulation should not be hindered where such practice has proved its efficiency, as is the case in England for instance.

51. Therefore, it is the co-regulation system that, in my opinion, appears as the most suitable in order to build bridges between the Member States' different approaches. Co-regulation is a mechanism that combines binding regulatory or legislative measures with the measures taken by the actors who are the most concerned, by taking advantage of their practical experience. It helps to enable the legislation to be adapted to the specific problems encountered in the house construction sector, to reduce the legislative burden by concentrating on essential aspects, and to draw on the experience of the parties concerned.[73]

52. Would it not be risky to place confidence in an economic sector's professionals when what is precisely needed is protection for their consumers against abuses in the same sector? In my view, the answer is negative: 'Too much protection kills

---

[70] Moreover, a self-regulation '*à l'anglaise*', where the power is de facto concentrated into a unique trade association, could be problematic from the point of view of European competition regulations.

[71] G. Howells, '"Soft Law" in EC Consumer Law', in P. Craig & C. Harlow (eds), *Law making in the European Union* (London: Kluwer Law International, 1998), 318.

[72] *Ibid.*, 330.

[73] The mechanism of co-regulation was been promoted again by the European institutions in 2003 as an alternative to the use of legal instruments (see the *Interinstitutional Agreement on Better Law-Making*, OJ 31/12/2003, C321/01).

protection!' For instance, European harmonization should avoid the perverse effects in France caused by regulations that 'are far too complicated and nit-picking'. My suggestion is that the European legislative act that would serve as the basis for harmonization limits itself to specifying, on the one hand, the field to which the minimum consumer protection measures would apply[74] and, on the other hand, stipulating the objectives whose carrying out would be entrusted to the actors in the construction industry. These objectives would take the form of the essential requirements in terms of consumer protection.

53. As for the 'essential requirements' in terms of consumer protection in the construction industry, the different European juridical systems have provided responses (sometimes very different) to the problems that are most often encountered. However, these differences can be transcended, and certain common principles can be drawn up in order to put forward some proposals for harmonization. These suggestions that I make concern first of all the drawing up of the contract, which should contain certain obligatory information, brought together around the four main information planks: a precise description of the building, mentioning the price and terms of payment, mentioning the existence of guarantees dealing with completion, and finally work structure guarantees. To guard against any financial disappointments that might result from the home's non-completion, any payment of deposits before the contract has been signed should be forbidden, without guarantee of restitution; next, payments would be carried out in a staggered fashion as the building work progresses. The quality of the structure as it is being built or, at the minimum, of the finished home would be checked independently by a professional supervisor who is better placed than the consumer to make an assessment in full knowledge of the facts. There remains the crucial question of any guarantees and insurance provisions that the consumer could benefit from in the case of discovering hidden faults later on. I advocate in this respect a European guarantee system, which would have

[74] To which people and to which types of building would these measures apply? To buildings that are used for living purposes and to ownership access obtained by 'physical persons' (that is to say individuals and not companies or assocations). On the other hand, the field to which the consumer protection measures would apply would not be restricted to a single method of ownership access, to prevent certain professionals turning away from this method to adopt other formulae that would not be regulated but present similar risks. Consequently, protection measures would apply as soon as the professional commits himself to providing a consumer with a home in demanding payments before it has been completed. Neither the identity of the land owner (professional or consumer) nor the type of contract used should lead to different forms of treatment to the detriment of the consumer. See Kohl, 2008, 325–330.

no connections with liability law suits and correlate statutes of limitation.[75] Finally, a sector-wide European arbitration body could cap the whole edifice.[76]

54. As has been said, these measures would only constitute the essential requirements, drawn up in a European legislative act in a very readable and practical manner. As explained above, an 'over-regulation' of residential construction law would risk taking away a sense of responsibility from the consumers, in giving them the illusion that the law protects them in every circumstance. However, how can we be sure that the individual would not find him or herself too isolated to ensure that their rights are defended? In the home construction sector, this risk could be compensated for by the involvement of consumer representation organizations, on an equal footing with the representatives of promoters and builders, in a European co-regulation body that could be created.[77] This body would specify and round off the 'essential requirements' established by European law, by drawing up in particular a good conduct code and/or a model of the general conditions for the contracts leading up to the acquisition of new homes. It could also play an important role in the setting up of the European guarantee system against non-completion or hidden defects.[78]

55. Some of the protections evoked here is nonexistent in some countries. Of course, the abovementioned proposition could contribute to a somewhat appreciable rise in the cost of a home. But here, as in many other fields, consumer protection involves a pooling of risk.

---

[75] The comparative study of insurance systems in several Member States of the European Union interestingly shows that harmonization could quite easily be achieved in that field, provided the scope of this harmonization is restricted to the housing construction sector. In effect, in several countries, there is a duty for house builders to be insured. The French general system of mandatory insurance, which is sometimes taken as an exemplary system (save for the costs that it generates), finds for instance a parallel in England in the housing construction sector. But when this duty is statutory in France, it is part, in England, of the NHBC system. The NHBC (the 'National House-Building Council'), is the standard setting body and leading warranty and insurance provider for new and newly converted homes in England (covering about 85% to 90% of new homes in England); its role is to work with the house building and wider construction industry to provide risk management services that raise the standards of new homes, and to provide consumer protection to new home buyers. Then in practice, the results are the same in France and in England and also in some other countries of the European Union. About the NHBC Scheme, see a.o. M.J. James, *Construction Law. Liability for the Construction of Defective Buildings*, 2nd edn (Basingstoke: Palgrave, 2002), 103–113.

[76] However, its intervention in order to sort out disputes (of an essentially technical nature) would not rule out people making use of the national courts.

[77] See Kohl, 2008, 678–708.

[78] The Distance Selling Directive (97/07) already used this option (see Art. 11.4) but seems not to be perfect in that case because of the lack of a preliminary set of general requirements surrounding the working of self-regulation.

5. Conclusion

56. If Chapter IV.C-3 of the DCFR differs from Belgian law on several issues, the solutions provided for in the DCFR are, from a Belgian point of view, extremely interesting. In my opinion, the DCFR could be taken as an example should a reform of Belgian construction law be needed, in the context of a European harmonization. Indeed, the drafters of the DCFR have fully succeeded in proposing well-balanced European principles that meet the different sensibilities of the Member States. For these reasons, it does not seem to me that the implementation in Belgium of this DCFR would lead to extraordinary difficulties, even if it would presuppose a change in some mentalities (specially regarding the need to give up on the idea of a statutory decennial liability, which goes currently to the roots of Belgian construction law).

57. However, the DCFR does not contain any specific provision in relation with the protection of the consumers' interest, in the house construction industry. In Belgium, such protection measures, mainly contained in the 'Breyne' Act 1971, constitute a very important part of construction law. Several other countries have also developed specific rules in order to provide for a protection of the consumers' interests. In my opinion, harmonization of consumer construction law seems desirable, as the sometimes large disparities that appear from one country to another are sources of insecurity and many other disadvantages. Moreover, such harmonization of consumer construction law seems to be more feasible in the short or medium term. As mentioned by von Bar at the end of his foreword to the PELSC, 'the question whether a European Civil code is or not desirable is a political one to which each member can only express an individual view'.[79] Being perfectly possible, in my view, to dissociate the 'consumer' construction law from the 'classical' construction law, it should be politically easier to move towards harmonization of the principles underpinning consumer protection in the house construction sector, without being obliged to wait for definitive decisions regarding the formal unification of general construction law, which, in any case, seems to be improbable in the short or medium term – at least under the form of mandatory principles.

[79] Barendrecht, et al, 2007, IX.

EUROPEAN REVIEW OF PRIVATE LAW
REVUE EUROPÉENNE DE DROIT PRIVÉ
EUROPÄISCHE ZEITSCHRIFT FÜR PRIVATRECHT

Guidelines for authors

The European Review of Private Law aims to provide a forum which facilitates the development of European Private Law. It publishes work of interest to academics and practitioners across European boundaries. Comparative work in any field of private law is welcomed. The journal deals especially with comparative case law. Work focusing on one jurisdiction alone is accepted, provided it has a strong cross-border interest.
The Review requires the submission of manuscripts by e-mail attachment, preferably in Word. Please do not forget to add your complete mailing address, telephone number, fax number and/or e-mail address when you submit your manuscript.
Manuscripts should be written in standard English, French or German.

Directives pour les Auteurs

La Revue européenne de droit privé a pour objectif de faciliter, par la constitution d'un forum, la mise au point d'un Droit Privé Européen. Elle publie des articles susceptibles d'intéresser aussi bien l'universitaire que le praticien, sur un plan européen. Nous serons heureux d'ouvrir nos pages aux travaux comparatifs dans tout domaine du droit privé. La Revue est consacrée en particulier á l'étude comparée de la jurisprudence. Les travaux concentrés sur une seule juridiction sont admissibles, à condition de présenter un intérêt dépassant les frontières.
Nous souhaitons recevoir les textes par courrier électronique, de préférence en Word. Ajoutez l'adresse postale compléte et le numéro de téléphone de l'auteur, un numéro de télécopie et l'adresse électronique.
Les textes doivent être rédigés en langue anglaise, française ou allemande standard.

Leitfaden für Autoren

Die Europüische Zeitschrift für Privatrecht will ein Forum bieten, um die Entwicklung des europäischen Zivilrechts zu fördern. Sie veröffentlicht Arbeiten, die für Akademiker und Juristen in ganz Europa grenzüberschreitend von Interesse sind. Vergleichende Untersuchungen aus jedem Bereich des Zivilrechts sind willkommen. Die Zeitschrift befaßt sich insbesondere mit vergleichender Rechtsprechung. Artikel, die sich auf ein einziges Hoheitsgebiet konzentrieren, können angenommen werden, wenn sie von besonderem grenzüberschreitendem Interesse sind.
Wir möchten ihre Beiträge per E-mail erhalten; und bevorzugen Dateien in Word. Bitte geben Sie Ihre Anschrift, Telefonnummer, Telefaxnummer und/oder E-mailadresse an.
Manuskripte sind in korrektem Englisch, Französisch oder Deutsch zu verfassen.

Style guide

A style guide for contributors can be found in volume 11, issue No. 1 (2003), pages 103–108, and online at http://www.kluwerlawonliine.com/europeanreviewofprivatelaw.

Index

An annual index will be published in issue No. 6 of each volume.