

Joint Response to the Commission's Action Plan on European Contract Law" (COM(2003) 68 final)

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A. Preliminary Remarks

A number of academics have given initial scientific statements about the Action Plan in co-operation with the TMR-Research Network “Uniform Terminology for European Private Law” and the Research Group on Existing EC Private Law (Acquis-Group). The published responses are the result of a conference hosted by the Academy of European Law in Trier (Germany) at the beginning of 2003. Following the publication of the Action Plan, the essays were put into their final form (recently published in: *Reiner Schulze/Martin Ebers/Hans Christoph Grigoleit* [eds.], *Information Requirements and Formation of Contract in the Acquis Communautaire – Informationspflichten und Vertragsschluss im Acquis communautaire*, Tübingen 2003).

In these statements, sixteen scholars from eight member states have responded to the upcoming tasks for the further development of European contract Law. In accordance with the Acquis research programme they provide first answers as to how common principles can be derived from the existing EC private law regarding the formation of contract, information requirements and sanctions with a view to creating a “common frame of reference”. In conformity with the introduction to the publication mentioned above, the following contribution summarises these responses to the Action Plan.

B. “A Coherent European Contract Law” – the Action Plan of the European Commission

The Action Plan of the European Commission issued in February 2003 moves the development of European contract law into a new phase.¹ Following up the pan-European discussion,² the Action Plan suggests “a mixture of non-regulatory and regulatory measures”³ considering the problems which result from differences between national contract laws concerning the uniform application of EC contract law and smooth functioning of the internal market.⁴ According to the plan, the measures aim to increase the coherence of Community law in relation to contract law and further examine whether there is a need for non-sector specific solutions.⁵ Solutions relating to general contract law will also be considered. Therefore, the discussion concerns an optional instrument for European contract law. Such an instrument would be available to the contractual parties as an independent regulatory framework for contract law created by the European Community. Member States could also use the framework as a model for developing their national contract law without it imposing an obligation to amend national law.

The tasks which the Commission sets in its Action Plan also herald a new stage in the investigation of European contract law. Of course, academic suggestions and initiatives of European institutions have been interrelated before. This can be seen not only in the Resolutions of the European Parliament concerning European Contract and Property Law,⁶ at the Hague Symposium “Towards a European Civil Code” which the Dutch Ministry of Justice invited as part of the Dutch presidency of the Council in 1997 and in the Communication of the Commission of July 2001,⁷ but also in the European Commission’s financing of academic projects relating to common principles of European private law⁸ and uniform legal terminology.⁹ However, the Action Plan of February 2003 goes a step further by regarding the academic examination of European contract law as an indispensable core component of further progress towards a coherent European contract law. In effect, this provides further research with a solid frame of reference. An important step which can reconcile po-

¹ Communication from the Commission to the European Parliament and the Council - A More Coherent European Contract Law - An Action Plan, 12 February 2003, COM (2003) 68 final.

² In response to the Communication from the Commission to the Council and the European Parliament on European Contract Law of July 2001, COM (2001) 398 final.

³ Action Plan (n. 1), No. 3.

⁴ C.f. Action Plan (n. 1), Summary.

⁵ Action Plan (n. 1), No. 3; a further aim envisages the elaboration of EU-wide General Terms and Conditions of Business.

⁶ Resolutions of the European Parliament of 26 June 1989 (O.J. 1989 C 158/400) and of 25 July 1994 (O.J. 1994 C 205/518).

⁷ *Supra* (n. 2).

⁸ By financing the Research Network “Common Principles of European Private Law” (with the participation of the universities of Barcelona, Berlin Humboldt, Lyon III, Münster, Nijmegen, Oxford und Turin) as part of the TMR-Programme of the European Commission; see *Reiner Schulze*, *Gemeinsame Prinzipien des Europäischen Privatrechts*, in: *Reiner Schulze/Gianmaria Ajani* (eds.), *Gemeinsame Prinzipien des Europäischen Privatrechts – Studien eines Forschungsnetzwerks*, Baden-Baden 2003; Overview of the publications of the Network as of April 2002 under <http://www.uni-muenster.de/Jura.iwr/Schulze/Forschungsvorhaben/Research%20Network%20I/publi.pdf>.

⁹ By financing the Research Network “Uniform Terminology for European Private Law”; see *Martin Ebers*, *Uniform Terminology for European Private Law – Ein neues Forschungsnetzwerk der Europäischen Union*, *Zeitschrift für Europäisches Privatrecht (ZEuP)* 2003, pp. 185 f. See also <http://www.isasut.unito.it/ajani.htm> and <http://www.uni-muenster.de/Jura.iwr/Schulze/>.

litical considerations of the Commission and scholarly research is the “common frame of reference” which the Commission is striving to erect. It aims to establish “common principles and terminology in the area of European contract law.”¹⁰ In order to guarantee that the common frame of reference corresponds to the needs of economic operators and offers a model for regulatory approaches to contract law, the Commission intends to finance extensive research in this area.¹¹

C. Approaches to research in legal science

The conception of the Action Plan for producing a “common frame of reference” for European contract law reflects current research in this area. The plan cites authoritative “basic sources”¹² for the development of European contract law which essentially correspond to the directions of current research, i.e. “restatement” research, investigations relating to national case law and contractual practice as well as research based on the *acquis communautaire*. The former direction attempts “to find possible common denominators, to develop common principles and, where appropriate, to identify best solutions” by comparing different national legal systems.¹³ Of particular importance – and therefore separately mentioned under the “basic sources” in the Action Plan – is the consideration of case law and established contractual practice. Even more than the state of respective national legislation, these two factors of legal processing often highlight any emerging tendencies in legal approximation and formation of similarities on the basis of new economic developments in the internal market.

By contrast, the endeavours of the third approach – the “*acquis* research” – is not primarily based on a comparison of national legal systems or national case law. Rather, the “existing Community *acquis* and relevant binding international instruments, above all the UN Convention on the International Sale of Goods (CISG) ... should be analysed” (per the Action Plan of the European Commission).¹⁴ The analysis of existing Community law aims to establish overarching principles and evaluations which underlie primary and secondary legal acts as well as court decisions of the *acquis communautaire* in order to use them as a framework for the judicial and legislative development of Community law. The *acquis* research therefore searches for principles capable of generalisation for European contract law within existing Community law whereas the “restatement” approach concentrates on similarities between national legal systems. The approaches are not mutually exclusive: rather, each complements and partly overlaps the other.

¹⁰ Action Plan (n. 1), No. 59.

¹¹ Action Plan (n. 1) No. 63.

¹² Action Plan (n. 1), No. 63.

¹³ Per the description in the Action Plan (n. 1), No. 63.

¹⁴ Action Plan (n. 1), No. 63.

D. Acquis Communautaire, Uniform Law and the comparison of national laws as fields of research

Concerning the development of contract law within the context of European Community law it appears appropriate to use the existing Community legislation and case law in this area as the main foundation. Even if legal acts have usually arisen on the basis of individual Community policies and “sector-specifically”, legal science cannot ignore the question concerning overarching structures and principles. Rather, as with national traditions of legal scholarship, a central task of the investigation of the new, autonomous legal system of the European Union is to endow the diverse legislative and judicial acts with a firmer structure and greater coherence where possible by means of more general principles and concepts. The principles elaborated by legal scholarship can then provide an aid for interpretation and judicial “gap-filling” or for the development of Community law as well. At the same time, they can at least provide a certain degree of guidance in the formulation of new legal acts vis-à-vis the internal coherence of Community law.

Where such principles or evaluations cannot be derived from Community law itself, the question concerning the “basic sources”¹⁵ leads, in a second step, to international uniform law which applies in most EU Member States. Admittedly, its rules and principles do not form part of the common European *acquis* as Community law. At the same time, however, they too form a common European law in a different way, viz. as the uniform law of the Member States. Particularly in relation to contract law, international uniform law has exercised decisive influence over the development of the *acquis communautaire* by means of UN law on sales (above all by providing a model for the Directive on the sale of consumer goods).¹⁶ Besides the *acquis* therefore, UN sales law is particularly indispensable as a foundation for understanding and as a complementary source for the scholarly contribution to the development of European contract law.

The “restatement” research is based on an even broader foundation, viz. the sum of national laws in Europe.¹⁷ Like the *acquis* research it proceeds from the existing body of laws. By contrast, however, its fields of reference are national legal systems; the variety of national laws and case law constitute its “basic sources”. The common principles which can be identified on this basis and regulatory works based thereon such as the Lando Commission’s Principles of European Contract Law

¹⁵ Per the formulation of the Action Plan (n. 1); c.f. n. 12.

¹⁶ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, O.J. 1999 L 171/12; *Dirk Staudenmayer*, Die EG-Richtlinie über den Verbrauchsgüterkauf, *Neue Juristische Wochenschrift* (NJW) 1999, pp. 2393 ff.; *Reinhard Schulte-Braucks*, Zahlungsverzug in der EG, NJW 2001, pp. 103 ff.

¹⁷ With regard to existing Community law, international uniform law and principles elaborated on the basis of comparative legal research as constituting the three areas of the development of a modern European private law, see *Reiner Schulze*, Allgemeine Rechtsgrundsätze und Europäisches Privatrecht, ZEuP 1993, pp. 424 ff.; *the same*, Le droit privé commun européen, *Revue internationale de droit comparé* 1995, pp. 7 ff.; *the same*, A Century of the Bürgerliches Gesetzbuch: German Legal Uniformity and European Private Law, *Columbia Journal of European Law* 1999, pp. 461 ff., 463; *Peter-Christian Müller-Graff*, Gemeinsames Privatrecht in der Europäischen Gemeinschaft, in *the same* (ed.), *Gemeinsames Privatrecht in der Europäischen Gemeinschaft*, 2nd edition, Baden-Baden 1999, pp. 9 ff.

(PECL),¹⁸ are therefore statements on law which have been transferred from national to supranational level. They do not constitute applicable supranational law nor does the latter serve as their basis. However, such statements – as compilations of common or at least widely held European legal thoughts and experiences – can provide an important contribution to the process of academic reflection and political decision-making affecting the development of Community contract law. As an expression of common legal thought in Europe, such principles can arguably claim to possess a “persuasive authority” in discussions on the further development of supranational law. The claim asserted by this approach presumes that Member States actually regard such principles as representing a “common denominator” or “common core” of the legal systems. This may prove all the more difficult to achieve as one attempts to move from abstract principles to precise rules or even to a system of rules. This problem became clear when comparing the competing proposals for European contract law (i.e. on the one hand, the “Lando”-PECL which are based on the northern and central European legal traditions and, on the other, the preliminary draft of the Academy of European Private Lawyers Pavia led by Giuseppe Gandolfi which is characterised by the Franco-Italian school of legal thought).¹⁹

In addition, the transferability of common principles of national laws to Community law is not only restricted by different jurisdictional foundations and the legitimacy of national legislation on the one hand and European legislation on the other. Rather, account must always be taken of the stage already attained within the Community’s autonomous system of law. It is certainly possible for principles based on the *acquis communautaire* to depart from the “restatements” in relation to individual situations. Model solutions relating to the continuing development of Community law which were developed on the basis of national laws are by no means automatically granted priority. Rather, besides the general advantages offered by one solution or the other vis-à-vis the needs of modern financial and legal transactions, one must also ask how the system of Community law can be developed as harmoniously and effectively as possible in light of the standards of primary law and legal development up to now. Last but not least, account must also be taken of the specific function of contract law within the framework of the integration process which Community law must first and foremost promote (unlike the legislatures of Member States which formulate law on the basis of economic and political integration which has already been attained within national borders).²⁰

¹⁸ Reprinted in *Ole Lando/Hugh Beale* (eds.), *Principles of European Contract Law, I & II*, The Hague, London 2000; German translation in: *Reiner Schulze/Reinhard Zimmermann* (eds.), *Basistexte zum Europäischen Privatrecht*, 2nd edition, Baden-Baden 2002, III. 10.

¹⁹ *Giuseppe Gandolfi*, *Code européen des Contrats – Avant-projet*, Milano 2001; German translation in: *Reiner Schulze/Reinhard Zimmermann* (n. 18) III. 18.

²⁰ *Hans Schulte-Nölke*, *Functions of Contracts in EC Private Law*, in: *Reiner Schulze/Martin Ebers/Hans Christoph Grigoleit* (eds.), *Information Requirements and Formation of Contract in the Acquis Communautaire – Informationspflichten und Vertragsschluss im Acquis communautaire*, Tübingen 2003, p. 85.

E. The Acquis research programme

Early research on European contract law predominantly concentrated on national laws to the neglect of the *acquis communautaire*. In the 1980s, for example, the group of legal scholars led by Ole Lando started their groundbreaking research largely on the basis of a comparison of national laws and without an in-depth examination of Community law.²¹ Hein Kötz adopted a similar approach in his studies which considerably promoted the comparative research of European contract law.²²

During the course of the 1990s, however, it became increasingly obvious that European Community law was also attaining pivotal importance in numerous areas of private law. As far as contract law was concerned, this was primarily true in terms of the growing number of Directives which tied the creation or consolidation of the internal market to the issue of consumer protection²³ – from the Directives to protect the consumer in respect of contracts negotiated away from business premises,²⁴ on consumer credit²⁵ and on unfair contract terms in consumer contracts,²⁶ which affected the whole of (consumer) contract law in a cross-sectional manner to the Directives on the protection of consumers in respect of distance contracts²⁷ and on the sale of consumer goods²⁸ enacted towards the end of the 1990s. The enactment of these Directives on consumer protection was by no means the only driving force behind the progressive “Europeanisation” of contract law and further materials of the law of obligations. For example, Community legislation and case law relating to industrial and employment law as well as areas of insurance and telecommunications law and not least the increasing incorporation of private international law in Community law also led to a dualism of national and European law emerging in contract law.

More recently, a series of research projects have taken account of this accumulated and increasing importance of the *acquis communautaire* for contract law and

²¹ Concerning the work and aims of this group of legal scholars *Ole Lando*, My life as a lawyer, ZEuP 2002, pp. 508 ff.; *Arthur Hartkamp*, Principles of Contract Law, in: Arthur Hartkamp et al (eds.), Towards a European Civil Code, 2nd edition, Nijmegen 1998, pp. 105 ff.; *Reinhard Zimmermann*, The Principles of European Contract Law Pts. I and II, ZEuP 2000, pp. 391 ff.

²² *Hein Kötz*, Gemeineuropäisches Zivilrecht, in: Herbert Bernstein/Ulrich Drobnig/Hein Kötz (eds.), Festschrift für Konrad Zweigert, 1981, pp. 481 ff.; *the same*, Rechtsvereinheitlichung – Nutzen, Kosten, Methoden, Ziele, *Rebels Zeitschrift für ausländisches und internationales Privatrecht (RebelsZ)* 50 (1986), pp. 1 ff.; *the same*, Europäisches Vertragsrecht I, Tübingen 1996.

²³ Concerning this development see *Reiner Schulze* (n. 8) pp. 11 ff., 18 f.

²⁴ Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, O.J. 1985 L 372/31; reprinted in: *Reiner Schulze/Reinhard Zimmermann* (n. 18) I. 15.

²⁵ Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, O.J. 1987 L 42/48; reprinted in: *Reiner Schulze/Reinhard Zimmermann* (n. 18) I. 20.

²⁶ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, O.J. 1993 L 95/25; reprinted in: *Reiner Schulze/Reinhard Zimmermann* (n. 18) I. 10.

²⁷ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, O.J. 1997 L 144/19; reprinted in: *Reiner Schulze/Reinhard Zimmermann* (n. 18) I. 25.

²⁸ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, O.J. 1999 L 171/12; reprinted in: *Reiner Schulze/Reinhard Zimmermann* (n. 18), I. 30.

other core areas of private law to a greater degree than was the case in the 1980s.²⁹ In order to intensify international co-operation in this field, a group of legal scholars from almost all Member States of the European Union have formed the “Acquis Group”.³⁰ A basis for the Group’s agenda was formed by the specialists’ conference “European Contract Law in EC Directives”,³¹ the results of which have been published in the compendium “European Contract Law in Community Law”.³² Accordingly, European contract law is not the sole object of investigation but an initial topic in the Acquis Group’s research.

In order to develop principles of European contract law, the agenda essentially involves three stages:³³ *First*, taking stock of primary law, the ECJ’s case law and the multifarious legal acts of the European Community in this field. Even at this stage, it becomes immediately obvious just how much substantive European contract law one finds in existing Community law.³⁴ *Second*, identifying overarching structures and similarities between individual legal acts and “sectors” in which Community law has developed (and accordingly, to identify any conflicts and evaluative contradictions). Insofar, foundations for a systematic analysis of Community law must be developed in preference to the existing perspective which predominantly refers to individual acts and sectors. *Third*, on this basis it must be investigated to what extent community law contains overarching principles concerning contract law. It is this latter aspect which promises real benefit for the development of European contract law. Even if the regulations of Community law have largely arisen within the framework of unilateral protectionist policies, they can still be based on principles which are capable of generalisation. To this extent, such principles must be isolated in contrast to the special features of consumer employee or capital investors law and utilised to create the foundations of a European contract law which is not only sector-specific in nature.

F. Information requirements and formation of contract in the Acquis Communautaire

On the basis of this agenda, the information requirements of Community law and regulations governing the formation of contract form the cornerstones for the future development of European contract law. The European Commission’s Action Plan now expressly refers to the conclusion of contract as one of the elements which must, in all likelihood, be contained in the “common frame of reference”.³⁵ The information duties assume a prominent role because they have developed in the *acquis*

²⁹ For example, *Nicolo Lipari* (ed.), *Diritto Privato Europeo*, 1997; *Stefan Grundmann*, *Europäisches Schuldvertragsrecht*, Berlin/New York 1999, *Ulrich Magnus* (ed.), *Europäisches Schuldrecht, Verordnungen und Richtlinien*, München/Berlin 2002, *Reiner Schulze* (n. 8) pp. 11 ff., 12, 18 ff.

³⁰ The programme of this Group is available under <http://www.acquis-group.org>.

³¹ At the European Legal Academy Trier between 27th to 28th September 2001.

³² *Hans Schulte-Nölke/Reiner Schulze* together with *Ludovic Bernardeau* (eds.), *European Contract Law in Community Law*, Köln 2002.

³³ See on the following *Hans Schulte-Nölke/Reiner Schulze*, *European Contract Law in Community Law*, supra at n. 32, pp. 11 ff., 15.

³⁴ C.f. the contributions in *Hans Schulte-Nölke/Reiner Schulze* (eds.), *European Contract Law in Community Law* (n. 32).

³⁵ “General rules on the conclusion, validity and interpretation of contracts ...”, c.f. Action Plan (n. 1), No. 63.

communautaire with great variety and complexity and have also attained a great effect on national laws – over and above the duty to implement Directives. The question as to whether they can be allocated to the pre-contractual or contractual sphere and if so, how, leads directly to the question as to which principles of Community law govern the conclusion of contract. By contrast, the problem of enforcing information requirements and the consequences of their infringement reveals problems relating to remedies.

The responses collected in the publication “Information Requirements and Formation of Contract in the *Acquis Communautaire* “ can only provide a rudimentary basis for the far-reaching subject of information requirements and the conclusion of contract in existing EC Contract Law. To begin with, this includes the state of Community law’s development above all in relation to consumer protection as the most important foundation today for developing principles of contract law by means of the *acquis communautaire*.³⁶ The formation of contract requires an investigation of the concept and functions of contract in Community law.³⁷ Within this framework, further discussion will have to deal in particular with the question as to how consumer law’s concept of contract relates to a more general concept of contract in private law. Once the respective functions have been identified, the investigation can concentrate on the central question concerning the extent to which Community law contains starting points for certain mechanisms and models relating to formation of contract.³⁸ For example, one problem requiring clarification is the extent to which the continental European model of the binding effect of corresponding declarations of intent can be found in Community law (in the German formulation of offer and subsequent acceptance or according to the pattern of UN sales law which arrives at different results, particularly in the case of crossed declarations). Similarly, it must also be considered whether Community law tends either towards the concept of an “extended conclusion of contract” or the traditional point of view, viz. to attach the conclusion of contract to a “magical moment”. In addition, problems relating to the interpretation of declarations and contracts³⁹ as well as the requirements of form laid down by Community law with regard to legal transactions⁴⁰ are directly tied to the theme of the conclusion of contract.

The sector-specific rules in the *acquis communautaire* form the basis for information requirements. These rules are largely guided by forms of distribution and, within this framework, partly by objects of distribution. Therefore, the task of progressing from a collation of individual duties to the elaboration of principles which contain them arises first and foremost within individual areas of regulation. This

³⁶ Concerning the occasionally underestimated importance of the case law on this area see *Dieter Kraus*, Zur verbraucherrechtlichen Rechtsprechung des Europäischen Gerichtshofs im Rahmen des Europäischen Privatrechts, in *Reiner Schulze/Martin Ebers/Hans Christoph Grigoleit* (n. 20), p. 29; using France as an example for the developmental tendencies of Community law in relation to national law see *Judith Rochfeld/Dimitri Houtcieff*, Perspectives de développement du droit communautaire en matière du droit de la consommation, in *supra* at n. 20, p. 49.

³⁷ *Hans Schulte-Nölke* (n. 20), p. 85.

³⁸ *Thomas Pfeiffer*, Der Vertragsschluss im Gemeinschaftsrecht, in: *Reiner Schulze/Martin Ebers/Hans Christoph Grigoleit* (n. 20), p. 103.

³⁹ Considering an aspect which has so far been largely neglected, see *Silvia Ferreri*, The Interpretation of Contracts from a European Perspective, in *supra* at n. 20, p. 117.

⁴⁰ *Peter Bydlinski*, Formgebote für Rechtsgeschäfte und die Folgen ihrer Verletzung, in *supra* at n. 20, p. 141.

includes information requirements in distance selling⁴¹ or information and advising requirements concerning financial services (which may also contain the rudiments of a European law of intermediaries).⁴² This step is directly linked to the question as to whether it is possible to distinguish special principles affecting a narrower regulatory area from more general, non-sectoral principles. A further aspect also asks whether concepts and principles for information requirements must partly be considered in legal areas other than contract law.⁴³ Likewise, further perspectives of research based on the *acquis communautaire* include co-ordinating the relevant rules of international uniform law and regulatory works based on a comparison of national laws.⁴⁴

Information requirements would be impotent without remedies and sanctions. Accordingly, a systematic arrangement of information requirements does not only depend on their respective content but also on their association with certain types of sanctions. Although the system of sanctions in European contract law would require a separate investigation, this subject must also be considered when analysing information requirements in the *acquis*. In particular, it must be asked whether, contrary to the initial impression that Community law largely leaves the enforcement of these requirements to national laws, starting points can be identified with regard to the legal consequences incurred by the infringement of information requirements.⁴⁵ This must also consider the aspect concerning the extent to which the “*effet utile*” principle can require certain remedies.⁴⁶ At present, such analyses can hardly lead to any stringent systematic arrangement of sanctions in Community law for infringements of information requirements but already they permit a series of statements to be made which reach beyond individual regulations.⁴⁷ Such statements reveal the first contours of the principles which can guide the future system of legal consequences in European contract law resulting from the infringement of information requirements.⁴⁸

⁴¹ *Paulo Mota Pinto*, Grundsätze von Informationspflichten im Fernabsatz nach geltendem EU-Vertragsrecht, in *supra* at n. 20, p. 157.

⁴² *Martin Ebers*, Informations- und Beratungspflichten bei Finanzdienstleistungen: Allgemeine und besondere Rechtsgrundsätze, in *supra* at n. 20, p. 171.

⁴³ Concerning this aspect of research, *Sjef van Erp*, Information in Contract and Property Law: Some Cross-Border Remarks, in *supra* at n. 20, p. 191.

⁴⁴ Initial findings in relation to this are provided by *Hans Christoph Grigoleit*, Regelungen über Informationspflichten in den European Principles und in den Unidroit-Principles, in *supra* at n. 20, p. 201 and *Matthias E. Storme*, Information Requirements and Remedies in the Principles of European Contract Law, p. 231, in *supra* at n. 20.

⁴⁵ See the analysis by *Thomas Wilhelmsson*, Private Law Remedies against the Breach of Information Requirements of EC Law, in *supra* at n. 20, p. 245.

⁴⁶ *Hans-Peter Schwintowski*, Informationspflichten und *effet utile* – Auf der Suche nach einem effektiven und effizienten europäischen Sanktionensystem, in *supra* at n. 20, p. 267.

⁴⁷ *Ulrich Magnus*, Rechtsfolgen im *Acquis communautaire*, in *supra* at n. 20, p. 291.

⁴⁸ C.f. in particular the conclusions by *Magnus* (n. 47) p. 311 f.