Paper for the 3rd of November

Considering the text of PECL 2:301 (see below), would you say that the article helps to eliminate some of the main disparities with regard to pre-contractual liability for negotiations in bad faith, existing between the laws of European countries, especially France, Germany and England? Why could one argue that the main issues relevant for the desired harmonisation of pre-contractual liability (*culpa in contrahendo*) remain unresolved?

PECL 2:301 Negotiations contrary to good faith

(1) A party is free to negotiate and is not liable for failure to reach an agreement.

(2) However, a party who has negotiated or broken off negotiations contrary to good faith and fair dealing is liable for the losses caused to the other party.

(3) It is contrary to good faith and fair dealing, in particular, for a party to enter into or continue negotiations with no real intention of reaching an agreement with the other party.

NB: Please note that the French law has been amended as of October 1st 2016. The new article of the French Civil Code cited below does not alter the law but gives a more accurate account of the existing doctrine.

French Civil Code 1804	**French Civil Code 2016** (as from October 1st)
No explicit statutory provisions about pre-contractual negotiations.	Art. 1112 Parties are free to commence, continue and to break off pre-contractual negotiations. They must compulsorily meet the requirements of good faith. In case of faulty pre-contractual negotiations, compensation for the losses deriving from it does not comprise compensation for the loss of advantages expected from the contract that was not concluded.