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ASPECTS CONCERNING THE EUROPEAN CIVIL CODE

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Abstract: The article reports one of the many interesting research projects being undertaken in Europe with a view to the possible unification or harmonisation of some aspects of private law. The Europeanization of Private Law is an important challenge that concerns the member states of the European Union. The paper analyses the opportunity of the European Civil Code and the effects that could emerge due to these new regulations.

The principles that rule the domain of contracts and the limits of regulation represent a major task that has to be discussed during the process of Europeanization of Private Law.

Keywords: contract, right, good faith, obligation, default rules

1. Aspects of Mediation in Civil Matters

Directive on certain aspects of mediation in civil and commercial matters was adopted in the 23rd of April 2008. The purpose of the Directive is to facilitate access to cross-border dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a sound relationship between mediation and judicial proceedings. The Directive is one of the follow-up actions to the Green Paper on alternative dispute resolution presented by the Commission in 2002, the other being the European Code of Conduct for Mediators established by a group of stakeholders with the assistance of the Commission and launched in July 2004.

Welcoming the adoption of this Directive, Vice-President Jacques Barrot said: "this Directive fulfills the political objective established in October 1999 by the European Council of Tampere, which – in the context of encouraging better access to justice in Europe – called for the creation of alternative, extrajudicial procedures for dispute resolution in the Member States. Mediation can provide cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and help preserve an amicable and sustainable relationship between the parties".

The Commission proposed the Directive in October 2004 (IP/04/1288). The Directive facilitates recourse to mediation by strengthening the legal guarantees accompanying it, thus giving real added value to citizens and businesses in the European Union. The key components of the Directive are as follows: the Directive obliges Member States to encourage the training of mediators and the development of, and adherence to, voluntary codes of conduct and other effective quality control mechanisms concerning the provision of mediation services. The Directive gives every judge in the Community, at any stage of the proceedings, the right to suggest that the parties attend an information meeting on mediation and, if the judge deems it appropriate, to invite the parties to have recourse to mediation, the Directive enables parties to give an agreement concluded following mediation a status similar to that of a Court judgment by rendering it enforceable. This can be achieved, for example, by the way of judicial approval or notarial certification, thereby allowing such agreements to be enforceable in the Member States under the existing Community rules.

The Directive ensures that mediation takes place in an atmosphere of confidentially and that information given or submissions made by any party during mediation cannot be used against that party in subsequent judicial proceedings if the mediation fails. This provision is essential to give parties confidence in, and to encourage them to make use of mediation. To this end, the Directive provides that the mediator cannot be compelled to give evidence about what took place during mediation in subsequent judicial proceedings between the parties. The provision of the Directive on periods of limitation and prescription will ensure that parties that have recourse to mediation will not be prevented from going to court as a result of the time spent on mediation. The Directive thus preserves the parties' access to justice should mediation not succeed.

Following the adoption of the Directive, Member States will be given 36 months to convert the new rules into national law.

2. Good Faith as Established in a Project of the European Civil Code

The article 1.106 from a project of The European Civil Code regulates the following:

In exercising his rights and performing his duties each party must act in accordance with good faith and fair dealing.

The parties may not exclude or limit this duty.

This article sets a basic principle running thought the Principles. Good faith and fair dealing are required in the

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