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MAY THE HARMONISATION OF EUROPEAN CONTRACT LAW FACILITATE THE RESOLUTION OF INTERNATIONAL ECONOMIC CONFLICTS?

The concept of harmonisation is a complex and controversial topic which has given rise to fervent discussions[1] and attracted criticism from both academics and practitioners. Some question the practical sense of the harmonisation process and the feasibility[2] of the undertaking, others raise concern about its elusive nature and direction or even claim it lacks focus.[3] Perhaps the strongest drawback and potential reason for failure of the proposal can paradoxically be the diversity of Member States. As Professor Sir Roy Goode pointed out in his response to the 2001 Communication,

> I can see no prospect of agreement between Member States of the Union. Contract law is a major part of law of obligations. In any given country it is shaped not merely by scientific considerations but by the structure and philosophy of that country's entire legal system, its culture, its language and its tradition. The divergences among European states are so great that it is difficult to see how any Member State could accept the imposition of a uniform contract law. What is acceptable in a non-binding set of rules may be quite different if imposed on a national legal system.[4]

In order to come to a valid conclusion on whether the harmonisation of European contract law may facilitate the resolution of international economic conflicts, the historical, theoretical, linguistic, economic, legal and practical aspects of the harmonisation proposal must be taken into account.

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[1] See various EU Consultations, *Communication on EU Contract Law*, COM (2001) 398; *A More Coherent European Contract Law*, COM (2003) 68; *European Contract Law and Revision of the Acquis: The Way Forward*, COM (2004) 651.

[2] P. Legrand, *European legal systems are not converging*, "ICLQ" 45 (1996), p. 52; idem, *Against a European Civil Code*, "MLR" 60 (1997), p. 44.

[3] For more information see: S. Vogenauer, *The spectre of a European contract law*, [in:] idem (ed.), *The Harmonisation of European Contract Law*, Portland, USA 2006, pp. 1–4.

[4] Response to COM (2001), para 11.

I. HISTORICAL CONTEXT AND BEGINNINGS OF HARMONISATION

The primary reason behind the gradual integration of European countries was a peaceful cooperation for restoring economic stability and order after the atrocities of World War II. Over time this cooperation has expanded onto other aspects of life, such as education, employment, healthcare, travel, leisure and international business relations. A result of a European integration was the creation of the European Union and, in consequence, lower transaction costs due to the abolition of custom duties for trade between Member States, introduction of a common currency for a larger group of the EU members, the emergence of a single market and reduced meaning of national frontiers, to name just a few.

The idea of a European integration proved compelling enough to attract the current 27 Member States. The source of attraction lies with the ease of functioning within an integrated Europe. This is achieved by the simplification and unification of procedures within the Member States.[5]

The process is neither finite nor complete, however. There are still areas which lack harmonisation. One of such domains which calls for urgent attention is the harmonisation of European contract law from an economic perspective. In order to properly understand and function in highly competitive international business environments, one needs a code to follow. It would also be reasonable from a good business practice point of view to act according to a unified and transparent set of rules. Consequently, a harmonised approach might also facilitate the resolution of international economic conflicts.

The first attempts at harmonisation of civil law date back to the year 2001 when the European Commission published the Communication on European contract law to the European Parliament and Council.[6] The Communication presented four options to stimulate debate, such as no action at all, in which case obstacles to cross-border trade would be resolved by interest groups or other parties; harmonisation of national laws via the promotion and development of common law principles; the improvement of existing legislation through the review, modernization and simplification of existing directives; and the adoption of a new legislation at the EC level — either as an optional instrument to be chosen by the parties or as a mandatory code.

The Commission was confronted by responses from 180 stakeholders from academic, governmental, legal and business backgrounds, as well as from the EU

[5] For more information see: United Nations (UN), *Progressive Development of the Law of International Trade: Report of the Secretary-General of the United Nations*, 1966; O. Lando, H. Beale (eds.), *Principles of European Contract Law Parts I and II. Prepared by the Commission on European Contract* Law, The Hague 1999; O. Lando et al. (eds.), *Principles of European Contract Law Part III*, The Hague, London and Boston 2003.

[6] Doc 10996/01; COM (2001) 398.

institutions, the Parliament, Council and Economic and Social Committee. The extent of feedback received was an undeniable indicator of interest in the concept of harmonisation.[7]

Two years later, the European Commission introduced the Action Plan.[8] At the heart of this initiative was the development of a common frame of reference to

> ensure greater coherence of existing and future *acquis* in the area of contract, by establishing common principles and terminology and providing for best solutions in terms of common terminology and rules i.e. the definition of fundamental concepts such as 'contract' or 'damage' and of the rules which apply, for example, in the case of non-performance of contracts.[9]

In October 2004, the Commission published a further Communication aimed at highlighting areas for improvement. Based on the feedback received from stakeholders from economic and legal interest groups, a report entitled *European Contract Law: The Way Forward* was published in April 2005.[10] Two Progress Reports on the Common Frame of Reference[11] as well as a Green Paper on the Review of the Consumer Acquis[12] and a proposal for a Directive on consumer rights[13] followed in 2007.

As a result of the extensive consultations and combined efforts, in 2008 the Study Group on a European Civil Code and the Research Group on Existing EC Private Law presented the European Commission with a Draft Common Frame of Reference (DCFR), which was then published in February 2009.

The DCFR is first and foremost an academic text, separate from political dissertations. It contains a set of principles, definitions and model rules which the authors hope to be a "tool for better lawmaking."[14] The "toolbox" should enhance the understanding of the diverse legal systems within the EU as well as improve the overall quality of European legislation.[15]

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[7] E. McKendrick, *Harmonisation of European contract law: The state we are in*, [in:] S. Vogenauer (ed.), op. cit., pp. 10–11.

[8] COM (2003) final OJ C 63/1.

[9] House of Lords, European Union Committee, *12th Report of Session 2008–09, European Contract Law: The Draft Common Frame of Reference, Report with Evidence, published by the Authority of the House of Lords, London: the Stationery Office Limited*, Chapter 2. *History of the Common Frame of Reference*, p. 9.

[10] European Union Committee, 12th Report (2004–05), *European Contract Law: The Way Forward*, HL 95.

[11] Docs 13065/05 and 12269/07.

[12] Doc 6307/07; COM(2006) 744.

[13] Doc 14183/08; COM(20080 614.

[14] *Principles, Definitions and Model Rules of European Private Law Draft Common Frame of Reference (DCFR), Outline Edition. Prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group). Based in part on a revised version of the Principles of European Contract Law*, Christian von Bar et al. (eds.), Munich 2009, p. 29.

[15] House of Lords, European Union Committtee, *12th Report of Session 2008–09, European Contract Law: The Draft Common Frame of Reference, Report with Evidence, published by the Authority of the House of Lords, London: the Stationery Office Limited, Summary*, p. 5.

The underlying principles governing the creation of the DCFR are freedom, security, justice and efficiency.

The purposes of the DCFR are multiple, the most important being the harmonisation of EU law in view of developing a single European Code of contract law, which would replace national laws at the Member States level. Furthermore, the aim of the DCFR is to provide a model framework for the final end result of the harmonisation process — the Common Frame of Reference (CFR). Apart from the goals presented above, the DCFR should also contribute to the promotion and facilitation of knowledge in the field of private law in the EU by means of introducing a common European legislative system to render business transactions between EU countries easier.

II. THE IMPLICATIONS OF THE THEORY OF CONFLICT ON HARMONISATION

May the harmonisation of European contract law also facilitate the resolution of conflicts which might occur in the course of the international trade activities?

The use of the notion "facilitate" was a deliberate attempt on my part. The common belief is that conflict is natural, inevitable and lies within human nature. The Wheel of Conflict, a concept introduced by B. Mayer, best represents the forces which cause and drive conflict.[16] It comprises the following elements: communication, emotions, history, structure, values and needs. International economic transactions involve a majority, if not all, of the conflict components, which do not function in isolation. They operate interactively and continuously affect each other.

Many conflicts arise because one party assumes it has expressed itself in accurate terms when in fact it has not. When the other party then acts in accordance with different (misunderstood) information and assumptions, it is perceived as acting in bad faith. Language and cultural differences greatly add to the miscommunication effect.

Business transactions are not free from emotions. When stakes are high, it is sometimes difficult to rationalize and control behavior, especially if values and beliefs are added to the mix. Individual and cultural characteristics sometimes make it difficult to properly "read" other parties. What may be important to the representatives of one nationality may not be seen as such by another. From here, there is only a small step towards the outbreak of a conflict. Emotions and values are driven by the fundamental element — needs. Human need is the driver of all actions, including involvement in business activity. Needs are not analyzed in uni-

[16] B. Mayer, *The Dynamics of Conflict Resolution, A Practitioner's Guide*, San Francisco, CA 2000, p. 9.

son, but as a hierarchy[17] or a continuum of human needs divided into the following categories and further subcategories: survival needs (food, shelter, health, security), interests (substantive, procedural, psychological) and identity-based needs (meaning, community, intimacy, autonomy).[18]

Structure is also identified as one of the key components of the Wheel of Conflict. As B. Mayer points out,

> An example is the litigation process, one structure for decision making when people are in conflict. Litigation is well designed for achieving a decisive outcome when other less adversarial procedures have not worked. However, it is also a structure that exacerbates conflict, makes compromise difficult, and casts issues as win-lose struggles.[19]

History, understood as different traditions, approaches to conducting business and legal cultures, may also have a bearing on conflict in the sense that past events, the actions of the participants involved and the system within which they operate may determine the future and either prevent or cause conflict.

The conclusion derived from the above brief analysis of the structural elements of a conflict is that international transactions carry a heavy potential for conflict. Without adequate means the field of international contract law can easily turn into a battle field. The EU contract law harmonisation proposal may facilitate the resolution of this dilemma.

III. LINGUISTIC CONSIDERATIONS OF THE HARMONISATION CONCEPT

The probability of a conflict occurring significantly increases when multiple and multinational parties are involved. One must keep in mind that participants of international economic transactions often have various backgrounds, different origins and come from different cultural as well as legal traditions. These factors alone are a fertile ground for divergences in opinion, which may lead to differing expectations and interpretations, and consequently make it impossible to prevent conflict, especially when linguistic barriers are present.

Mr. Jonathan Faull and Lord Maclennan of Rogart raised the issue of linguistic implications of the harmonisation concept in the course of Mr. Faull's appearance as Expert Witness on 25th March 2009. Their discussion revolved around the usefulness of the DCFR in terms of removing ambiguity about the meaning of words at the European Union level as well as avoiding potential conflict between

[17] A. Maslow, *Motivation and Personality*, New York 1954.

[18] The theories and studies relating to human needs are broad and go beyond the scope of this article and therefore have only been outlined. For more information please refer to B. Mayer, op. cit., pp. 16–22.

[19] Ibid., pp. 12–13.

different conceptions of language used at a national level. As Mr. Faull pointed out,

> First of all, when we here in the European Commission are thinking about proposing legislation in a contract law or contract law related field it will be immediately helpful to have all this work to hand which will explain to us precisely how words and concepts are used in the contract law systems of the Member States — sometimes, by the way, even differently in the same language as between different Member States. When you think of jurisdictions sharing the language that we are using now it may well be that in Ireland, in Scotland, in England and Wales one word or concept is given different meanings and interpretations and it is very helpful to know that. That can be multiplied exponentially across the European Union in all the other languages we use; plus of course the special terms of art that we have developed in the European Union in all our languages. That is a very complicated but very basic starting point for any reflection within the European Union institutions about legislation touching upon contract law.[20]

The initiators of the harmonisation do not rule out removing potential conflicts resulting from the use of various language conceptions within the Member States as one of the advantages of the proposal. The introduction of common European contract law terms and gradual removal of inconsistencies in terminology and substance of European legislation seems a reasonable approach and one which follows the tradition of drafting agreements. In the preamble of most agreements there is an introductory clause explaining the meaning of the terms used therein. This helps to avoid confusion and duality of interpretation. Why not follow the same structure, but on a much wider scale, in the drafting of European contracts for cross-border transactions? Introduction of a unified set of linguistic rules and providing harmonised definitions of terms used in contract law systems of the Members States may well prove to be one of the most effective and relatively simple ways of facilitating international conflict resolution.

IV. THE ECONOMIC ASPECTS OF THE HARMONISATION PROPOSAL

In a majority of cases, reality supersedes lawmaking. The harmonised European contract law should therefore reflect modern issues and be tailored to the current needs of international participants. In other words, the end result should be user-focused in order to guarantee its practical impact.

In 2005 a survey of the attitudes of European businesses to the advantages and disadvantages of the harmonisation process of European contract law was conducted.[21] The scope of the survey covered cross-border transactions between

[20] Draft Common Frame of Reference: Evidence, 25 March 2009, Mr. Jonathan Faull, Director General, Justice, Freedom and Security, European Commission, p. 30.

[21] For more details see S. Vogenauer, S. Weatherill (eds.), *The Harmonisation of European Contract Law*, *The EC's Competence to Pursue the Harmonisation of Contract Law — an Empirical Contribution to the Debate*, Oxford and Portland, Oregon 2006, pp. 105–148.

businesses (B2B transactions) and between consumers (C2C transactions). The survey comprised 175 companies from 8 Member States (France, Germany, Hungary, Spain, Italy, Poland, UK and the Netherlands) and 7 industries (consumer and retail, energy and resources, healthcare and life sciences, manufacturing and construction, professional and other services, technology, and transport). The main objective of the questionnaire was to gather views on the project of harmonisation of European contract law as well as on alternative options for the development of EU contract law. The results of the survey were meant to be an indicator for the European Commission on whether its efforts towards harmonisation are going in the right direction.

The survey included 27 questions on such issues as general awareness about the harmonisation project, existence of obstacles to cross-border trade, frequency of their occurrence and the financial impact of these obstacles, differences in interpretation and implementation of EU Directives, the factors influencing the development of good contract law, the choice of governing law, whether harmonisation is seen as a good thing and if not, what would be preferred, should harmonised EU contract law exist alongside national contract laws, how detailed should the new European contract law be, perception of achievability (feasibility) of the project and finally, the likelihood of using the harmonised law in cross-border transactions.

The survey showed that 83% of all businesses and as many as 88% of the SMEs view the concept of harmonisation favorably. The results from the small and medium sized sector are not surprising. Let us look at the basic numbers for Poland as an example. SMEs are particularly numerous in a majority of the Member States, including Poland where SMEs constituted 99.8% in 2010–2011 according to Eurostat. They, therefore, attract special attention of vote-seeking politicians. Due to their size they are most directly affected by regulations and constitute the main beneficiaries of any improvements in contract law. SMEs are also less skillful in responding to changes in economic conditions.

The main activity of 75% of SMEs in Poland is commerce, mainly export. The tendency for SMEs to engage in international operations with foreign entities, however, is much lower than in the case of larger companies. This can be in part explained by the ability of large, well established companies to interpret and apply laws and regulations. SMEs may not have the expertise available in house and may be less favorably equipped to finance obtaining it.

Moreover, the growth in the SME sector in Poland is not satisfactory. According to the data gathered by the Directorate General Enterprise and Industry of the European Commission, Polish SMEs do not reach the same growth that their peers have elsewhere in Europe and their share in the country's overall value-added creation is substantially lower than the EU-average. The less impressive figures refer especially to the micro and small business segments, while the medium-sized business segment matches the EU-average.

In view of the above factors, solutions must therefore be sought to stimulate the desired performance level in the Polish SME sector. The harmonisation of European contract law and the creation of an optimal regulatory framework for international business operations might prove to be a legal remedy when economic measures alone are no longer sufficient.

Furthermore, as Professor Vogenauer points out in his reply to Question 60 in the course of his Witness Examination dated 26th November 2008, the harmonisation of European contract law may simply render trading easier for European SMEs:

> The wine seller in Bordeaux and the purchaser in Bristol, again in an ideal world they would not have to quibble about the applicable law, they would not need legal advice, they would have a European contract law into which they could opt, ticking a box possibly, and they would have that regime and be able to rely on the general overall fairness of that regime that has been approved by the European authorities. For such small businesses, that might be fairly attractive.[22]

V. THE LEGAL ISSUES SURROUNDING HARMONISATION

Despite the favorable approach to the idea of harmonisation of a majority of respondents, only 54% thought that it is indeed achievable. This echoes the voices of criticism of those doubting that harmonisation is a feasible undertaking. The reasons for the objections are multiple, the most important being the practical difficulties of developing a common European law, little likelihood of achieving mutual agreement among Member States due to legal, political and cultural differences, as well as particular difficulties involved with harmonising common and civil law traditions.

When it comes to the choice of governing law, 60% of the questioned population opted for the freedom of choice and would like a more comprehensive system either substituting national laws or existing in addition to them to be introduced. This reflects the Commission's proposal of the CFR as an optional instrument:

> the CFR could be a framework of EU law binding where parties chose to adopt it. Parties to a contract could decide to make such law the law applicable to their agreement, just as they are now able to agree that the law of a Member State or a third party could apply. Alternatively, there could be a presumption that the framework would be binding unless the parties agreed to exclude it. But the EU framework would not be mandatory.[23]

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[22] Draft Common Frame of Reference: Evidence, 26 November 2008, Professor Stefan Vogenauer, Professor of Comparative Law, Oxford University, p. 16.

[23] House of Lords, European Union Committee, *12th Report of Session 2008–09, European Contract Law: the Draft Common Frame of Reference, Report with Evidence, published by the Authority of the House of Lords, London: the Stationery Office Limited*, p. 20.

The willingness for optional adoption was notably widespread in Poland, where 100% of respondents replied that if a European contract law were established for cross-border transactions, they would be "very likely" to use it. This seems to be in line with the Commission's agenda of establishing an optional instrument to exist alongside national laws. The freedom of choice principle would effectively rule out the opponents' argumentation against harmonisation due to imposition of a uniform contract law.

Quite logically, the practical use of this optional instrument would depend on its scope and quality. The factors making for a good contract law listed by the survey participants were as follows: ability to enable trade, fairness, predictability, briefness and conciseness, flexibility and prescriptive nature.

Perhaps the most prominent conclusion derived from the analysis of the survey results was that, given the choice, 83% of the respondents would take advantage of it and use the harmonised system. This is a clear signal of a need for some kind of change, despite the voices of concern of opponents.

Market research has confirmed that harmonisation of European contract law would be desirable, but it did not bring up the fundamental question — what for? In other words, what is the practical need which triggered 83% of favorable responses? The already mentioned stimulation of economic growth at the SME level can be viewed as one of the possible benefits. Might another reason prove to be facilitating the resolution of international economic conflicts?

Question 3 of the survey raised the issue of factors impacting the ability to conduct cross-border transactions. The respondents were asked to rate on a scale of 1 to 10 the following: language, variations between legal systems, cultural differences, differences in implementation of EU directives, bureaucracy/corruption, cost of obtaining foreign legal advice and tax. The latter was seen as having the highest impact.

There was no mention of differences in interpretation of national laws and possibility of international conflicts in the course of or due to cross-border transactions.

Perhaps facilitating resolution of conflicts is not the immediate advantage that comes to mind when considering harmonisation of EU contract law. This is the role of international rules of arbitration. Nonetheless, it should not be excluded from the discussion on the introduction of a harmonised EU contract law.

Following this train of thought, it is worthwhile to mention how international arbitration has evolved to its current status, taking as an example the introduction of the first para-regulatory text, the IBA Evidence Rules.[24]

[24] For more information see C. Mueller, *Sense and Non-sense of Guidelines, Rules and Other Para-regulatory Texts in International Arbitration*, "ASA Special Series" no. 37, Chapter 5. *The Importance and the Impact of the First PRT, IBA Evidence Rules* (to be published Sept. 2012).

In brief, the history of the IBA Rules dates back to the year 1983 and has its origins in the first para-regulatory text, the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration. The reason for the introduction of these rules was the need for harmonisation of international arbitration practices and avoidance of the clash of the common law (US and UK) and civil code (Europe) arbitral legal cultures.[25]

Much has changed in arbitrational dispute resolution since the drafting of the first rules in 1983. Growing internationalization, introduction of new norms and practices and an international mix of participants of the arbitration process triggered a need for change. In consequence, the Supplementary Rules were revised in 1999. The end result was a compendium of best practices in international arbitration procedures which had been developed in the past years, tailored to the needs of both the civil and common law practitioners.

Quite recently, in May 2010, these rules were once again revised on request of the IBA Council. The goal was to ensure a thorough review which would have practical impact. Prior to the commencement of the work, one of the working groups performed an online survey gathering statistical data on the frequency of use of the IBA Evidence Rules. The survey was completed by 173 respondents from 30 different jurisdictions. The conclusions derived from the market research proved a known fact — that the IBA Evidence Rules are widely used in international arbitration, both in terms of application by reference in the arbitration agreement and in application in the procedural framework.

By comparison to the European Commission's proposal of harmonisation of European contract law, the reasons for the introduction of the IBA Rules were very much the same. Both concepts have at their source the desire to avoid differences in common and civil law systems. Further arguments in favor of harmonisation of EU contract law are the increase in cross-border transactions, differences in contract law as a barrier to trade, the growth in standard form contracts and the growing use of boilerplate clauses, the unsuitability of national laws for international transactions, the growth in international commercial arbitration and the inability of national laws to solve problems which currently confront those who enter international transactions.[26]

VI. THE PRACTICAL ASPECT OF HARMONISATION

Why is it so important to fill the void between common and civil law tradition in the field of contract law? Moreover, is there really a void to fill? Studies con-

[25] Terry F. Peppard, *New international evidence rules advance arbitration process*, "Wisconsin Lawyer" 73, March 2000, no. 3.

[26] For more details see E. McKendrick, op. cit., pp. 14–19.

ducted as part of the Trento project, the Common Core of European Private Law, have shown (despite opposite views in this regard) that the differences between the laws in various EU countries, and particularly between the common and civil law system, may not be as significant as one would imagine. In fact, in many cases, the common and civil law practitioners reach similar results but by different routes.[27]

Practice has shown that the coexistence of national laws does not impede the performance of contractual agreements. The UK government, being one of the strongest opponents of harmonisation, argues that the UK is itself a perfect example of a flawlessly functioning single market despite differences between the various legal systems in Scotland, England and Wales. This view fails to recognize the implications of growing internationalization, increased frequency and level of complexity in transactions between Member States, and that the "single market" concept is no longer solely limited to the UK, but involves a more international and European participant clientele. Introduction of one, clear path to follow in the form of a harmonised system of European contract law might simplify international relations and reduce potential conflicts.

Both theory and practical experience have proven that a conflict occurs not only because of ill will of the parties involved, but, among others, because of differing understanding and interpretations of the rules. Conflict resolution and negotiation classes are thus becoming more and more popular at prominent universities and top notch business schools. Following the tradition of Economic Analysis of Law, legal and economic issues are beginning to be evaluated in unison and not seen as separate domains.[28] Since business is becoming increasingly international, the aim of the carefully designed courses, offered by public and private educational business institutions, is to raise awareness of the diversity of today's world and the effect this can have on cooperation.[29] Perhaps one of the most successful teaching tools about inter-cultural awareness is a game called Barnga. Participants play a simple card game in small groups, where conflicts begin to occur as participants move from group to group. This simulates real cross-cultural encounters, where people initially believe they share the same understanding of the basic rules. In discovering that the rules are different, players undergo a mini culture shock similar to the actual experience when entering a different culture. They then must struggle to understand and reconcile these differences to play the game effectively

[27] R. Zimmermann, S. Whittaker, *Good Faith in European Contract Law*, Cambridge 2000.

[28] F. Gomez, *Some law and economics of European private law harmonization*, [in:] A.S. Hartkamp et al. (eds.), *Towards a European Civil Code*, 4th ed., Alphen aan den Rijn, the Netherlands 2010.

[29] For more information on cultural diversity see C. Hampden-Turner, A. Trompenaars, *The Seven Cultures of Capitalism. Value Systems for Creating Wealth in the United States, Japan, Germany, France, Great Britain, Sweden and the Netherlands*, New York 1990; G. Hofstede, *The Cultural Relativity of Organizational Practices an Theories*, "Journal of International Business Studies" Fall 1983, pp. 75–89.

in their "cross-cultural" groups. Difficulties are magnified by the fact that players may not speak to each other but can communicate only through gestures or pictures. Participants are not forewarned that each is playing by different rules; in struggling to understand why other players do not seem to be playing correctly, they gain insight into the dynamics of cross-cultural encounters.[30]

Barnga provides a new level of revelation by showing that different cultures understand and interpret things differently and that these differences must be reconciled in order to avoid conflict and ensure effectiveness in international environments. This might prove a valid argument for the introduction of a harmonised European contract law.

VII. CONCLUSION

Summarizing the above considerations, the primary objective of the European Commission's proposal of a harmonised system of European contract law, initially in the form of a Draft Common Frame of Reference, is the simplification of cross-border business transactions between Member States. This goal can be achieved by the promotion and facilitation of knowledge exchange in the field of private law. The idea of harmonisation recognizes the international clientele and the effect different cultures, traditions and backgrounds can have on the interpretation of law.

The proposal was supported by market surveys, questionnaires as well as invitations to engage in constructive debate distributed among academics, government officials, and users — practitioners of law and business. It triggered constructive responses, numerous critical comments and provoked fervent discussions regarding the future, scope and final shape of the harmonised EU law — the Common Frame of Reference.

Simplification is not and should not be *l'art pour l'art*, however. The two main reasons behind it are the stimulation of economic growth, especially at the level of small and medium sized enterprises, and facilitation of international economic conflict resolution. Codification of existing rules of law and practice into a transparent and harmonised system makes reference easier in situations where duality of interpretation exists. This effect can be reinforced by the introduction of a coherent EU legislation and a common legal language to contracting parties and legislators. The combination of a complete harmonised system in terms of contract law, on the one hand, and a unified legal language, on the other, would make it easier for participants of international business transactions to comply with good business practice and to act in accordance with a transparent set of principles and

[30] The overview and description of the game were prepared by Andrea MacGregor, http://socrates.acadiau.ca/courses/educ/reid/games/Game_descriptions/Barnga1.htm.

rules. Such a solution would enable potential conflict avoidance as well as help resolve or facilitate the resolution of a conflict, should such occur.

Although it is not the primary objective, harmonisation of European contract law may potentially facilitate the resolution of international economic conflicts and thus fulfill the underlying principles governing the creation of the Draft Common Frame of Reference: freedom, security, justice and efficiency.

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Summary

This paper strives to enhance the reader's understanding of the European contract law harmonisation concept from the point of view of conflict management. The main aim of this paper is to determine whether the harmonisation of European contract law may facilitate the resolution of international economic conflicts, in particular at the level of small and medium sized enterprises. The historical, theoretical, linguistic, economic, legal and practical aspects of the harmonisation proposal are successively taken into account.

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