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HARMONIZATION OF EUROPEAN CONTRACT LAW AS A MEANS OF BOOSTING POLAND'S ECONOMIC ACTIVITY IN THE EUROPEAN MARKET

Проведено аналіз гармонізації Європейського контрактного права шляхом уніфікації законів та інших регуляторних актів, що стосуються міжнародних бізнес транзакцій, сприятиме стрімкому підйому економічної активності в Польщі і покращить зростання в секторі малих та середніх підприємств.

The aim of this paper is to analyze whether the harmonization of European Contract Law through the unification of laws and regulations relating to international business transactions can boost Poland's economic activity and improve growth within the sector of Small and Medium Enterprises.

The initial idea behind the creation of the European Union was a peaceful cooperation for restoring economic stability and order. Over time the Union expanded onto other aspects of life such as education, employment, healthcare, travel, leisure and international business relations. A result of European integration were lower transaction costs due to the abolition of custom duties for trade between Member States, a common currency for a larger group of the EU members, the single market and reduced meaning of national frontiers to name just a few.

The idea of 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.

The process is neither finite nor complete however. There are still areas which lack harmonization. One of such domains that calls for urgent attention is the harmonization 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.

The first attempts at harmonization of Civil Law date back to the year 2001 when the European Commission published the Communication on European Contract Law. Two years later, the European Commission introduced the Action Plan. As a result, 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 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” 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. Edited by Christian von Bar, Eric Clive and Hans Schulte-Nölke, Hugh Beale, Johnny Herre, Jérôme Huet, Matthias Storme, Stephen Swann, Paul Varul, Anna Veneziano and Fryderyk Zoll. Sellier, European Law Publishers [23, p. 29]. 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 unification and harmonization 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 harmonization process, the Common Frame of Reference (CFR). Apart from the goals presented above, the DCFR should 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 facilitate business transactions between EU countries.

The fairly recent proposal of European Contract Law harmonization and consequent publication of the DCFR have given rise to fervent discussions and attracted critic from both academics and practitioners. Some question the practical sense of the unification process, others raise concern about its' direction or even claim it lacks focus.

Can the harmonization of European Contract Law serve as a means of boosting Poland's economic activity in the European market? In order to answer this question one needs to combine legal and economic perspectives on the harmonization of European Contract Law and perform an evaluation of the proposal from the users' perspective – mainly Small and Medium Enterprises. The focus should be on SMEs for several reasons. SMEs are particularly numerous in a majority of the Member States, including Poland (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 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 harmonization 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. Introducing a unified and transparent set of rules relating to international commerce can aid in boosting Poland's economic results, particularly in the less privileged SME sector.

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ПРОБЛЕМИ МІЖНАРОДНОГО ТРАНСФЕРУ ТЕХНОЛОГІЙ

Досліджуються проблеми міжнародного трансферу технологій. Обґрунтована необхідність міжнародного трансферу технологій. Визначено чинники, що стримують розвиток міжнародного трансферу технологій. Оцінено проблемні питання щодо розвитку міжнародного трансферу технологій.

The article is sanctified to research of problems of international transfer of technologies. Reasonable necessity of international transfer of technologies. Factors that restrain development of international transfer of technologies are certain. Problem questions are appraised in relation to development of international transfer of technologies.

Найважливішим складником інноваційного процесу та перспективним механізмом економічної стабілізації держави є трансфер технологій, сутність якого полягає в передачі ноу-хау, нових технологій, технологічного обладнання та науково-технічних знань від власника до замовника. Трансфер технологій став невід'ємною частиною світового економічного процесу, а робота організації наукового сектора в світі все більше і більше оцінюється з погляду економічної ефективності використання розроблених технологій на світовому ринку.

Проблеми міжнародного трансферу технологій є предметом досліджень багатьох іноземних та вітчизняних фахівців, зокрема Друкера П., Портера М., Познера М., Соллоу Р., Хікса, Шумпетера Й., Бажала Ю.В., Будкіна В.С., Дахно І.І., Дідківського М.І., Лук'яненка Д.Г., Олейнікова О.О., Поручника А.М., Рогача О.І.,