Guest Editorial

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In a globalizing world, trade and commerce are likely to flourish once they are effectively regulated (preferably even facilitated) by law. But even to date in Europe there is still no uniform commercial law. Yet, business entrepreneurs and legal practitioners must be prepared to face forthcoming fundamental changes in the legal landscape in the European Union with the launch of the e-book *Civil Law – European Judicial Cooperation* in October 2013 in Brussels under the auspices of the Council of the European Union. This ‘semi-codification’-like project consisting of altogether 17 chapters and 911 pages may, substantively speaking, more or less be considered as a European ‘Restatement’ on EU Civil and Commercial Law, notably Private International Law (PIL), including ‘non-state’ court dispute settlement (mediation).

This special *DQ* issue, however, not only centres around forthcoming changes that relate to PIL but to currently debated initiatives to achieve EU *substantive* law to be applied to commercial sale contracts as well.

The first contribution on the upcoming EU Law Reforms in the area of cross-border civil and commercial procedural law, including cross-border insolvency law, provides for an overarching view on secondary EU law being relevant to cross-border business and commerce. To that end, first the ‘Brussels I Recast’ (*i.e.* EU Regulation 1215/2012, replacing EU Regulation 44/2001 effective from 10 January 2015) deserves attention, not only because the ‘*exequatur*’ shall be replaced by a ‘format’ of ‘automatic’ recognition and enforcement of judgments from other EU Member States but also due to the fact that jurisdiction rules have been amended in many respects. These jurisdiction rules now *inter alia* allow for taking into account court proceedings having been commenced in third (*i.e.* non-EU) legal orders. Also the essence of the Commission Proposal to revise EU Regulation 1346/2000 on Insolvency shall be given notice.

The contribution of Kruisinga on current developments in the area of cross-border commercial sales contracts may be conceived as complementary to the first, in that it narrows down the debate to the applicable law, more particularly in view of commercial sale contracts (*i.e.* consumer relationships being excluded). The focus will be on the relevance of national borders for ascertaining the applicable legal regime for contracts for the international sale of goods. In 1980, the UN Convention on

Contracts for the International Sale of Goods (hereafter: the CISG) was specifically drafted to apply to contracts for the international sale of goods. Recently, the European Commission also published a document containing provisions that can apply to contracts for the international sale of goods. On 11 October 2011, the European Commission published a Proposal for a Regulation on a Common European Sales Law (hereafter referred to as the Regulation on CESL). If, as is being underscored by the author, the Regulation on CESL enters into force, an additional option is offered. Contracting parties within the EU will, in that case, generally be entitled to choose between the CISG, the CESL and national law. Thus, more attention will have to be paid to the agreement on the applicable law.

Last but not least, the contribution of Kallipetis sheds light on an increasingly important topic, namely, a mode to solve commercial disputes not in court but by mediation. Kallipetis approaches this topic in his contribution from a practical perspective. Whereas positive law has been harmonized on the basis of EU Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters, Kallipetis’ contribution enlightens another aspect of mediation, namely, mediation ethics in Europe, or, as the author puts it:

Everyone will agree that the basic principles themselves are fairly straightforward and can be expressed in simple terms. However the problem always arises when particular issues, usually unexpected, crop up which require the application of general principles to circumstances which are not “black and white”.

Whereas two main issues can be distinguished, namely, the ethical conduct of the mediator and the ethical conduct of the lawyers, Kallipetis concentrates on the first, *i.e.* the ethical standards expected of mediators. In this field soft law sources are relevant: the European Code of Conduct for Mediators (interrelated with the European ADR Directive). These sources shall be compared to the United States Model Standards for Conduct of Mediators.

Altogether one can say that the European Union is facing pivotal changes in cross-border business and commerce law with regard to jurisdiction, the proper law to be applied, recognition and enforcement mechanisms and, last but not least, business ethics. The course changes referred to incontestably also show an impact on global trade and commerce.

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