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on Expedited settlement of commercial disputes in the EU

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The settlement of commercial disputes is in general slow in the EU. The World Bank estimates that in a number of Member States, it may well take up to 3-4 years to enforce a commercial contract. Many companies are by law obliged to make reservations in their books for amounts under dispute, this applies for instance to banks and insurance companies. As a result, all over Europe, large amounts of capital are idle.

The civil procedures are in general not harmonised on a European level. Only a few aspects have been successfully harmonised through some measures adopted within the framework of civil justice cooperation.

The recast of the Brussels I regulation, that lays a basis for jurisdiction, recognition and enforcement of judgment in civil and commercial matters and came into force in 2015, made some crucial adjustment to the cross border ligation in the EU. With it, the exequatur procedure was abolished, resulting in cutting costs and saving time both for EU businesses and citizens.

One of the other measures is the European Small Claims Procedure. It introduces a procedure specifically adapted to consumers' disputes and other disputes relating to smaller value of less than EUR 5 000. It applies in cross-border cases and it was largely modelled on existing rules in some Member States.

In a similar way, a specific procedural order regarding cross-border commercial disputes between businesses (B2B) could be put in place. Such a procedural order - a European Expedited Civil Procedure - would provide European business with a cost-saving and fast option to get a settlement of commercial disputes.

A European Expedited Civil Procedure could feature tight, pre-determined deadlines, no separate appeal on procedural questions and limited possibilities of raising new circumstances after first submissions. Such a procedural order could be designed to provide parties with a settlement even of complicated disputes in six months to a year, which would lead to vast savings for European businesses and activate idle capital. The procedure would be voluntary and would require the agreement from both contracting parties.

Another question to assess is the eventual impact of choice of law rules, not least of the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). Currently, the choice of law is not evenly distributed between the legal orders of the Member States. In many cases, the law chosen has little relation with the parties, the object of the agreement or the place of fulfilment. The EECP would not impede the parties' right to choose the applicable law, but instead could be a faster and cheaper alternative than choosing the law of a state that has little relation with the claim just because that jurisdiction promises a faster settlement.

A European Expedited Civil Procedure would require highly skilled legal practitioners. The question arises what measures can be taken to support legal practitioners in the Member States as the concentration of choice of law to certain jurisdictions influences the development of jurisprudence in commercial matters in some Member States. In addition, legal practitioners are not given the opportunity to practice the commercial cases, which in its turn is essential for speedy settlement of disputes.

A European Expedited Civil Procedure may be an element to assist to create a better

distribution of the choice of law in commercial matters between the Member States' jurisdictions, as parties often look to a combination of a legal orders suitable for the matter of the agreement in question and a procedural system that can provide a speedy resolution should a dispute arise.

Against this background, there would be grounds to consider:

- A proposal for a European Expedited Civil Procedure;
- Amendments to the Rome I Regulation; and
- Other measures to build competence in commercial matters in the Member States.