ABSTRACT

'Public versus Private Governance in Contract Law – the Case of Private Debt Collection in Europe'

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More reasons justify dealing with private debt collection in contemporary Europe starting with the fact that the sophistication, strength and market share of businesses offering debt recovery-related services, both locally and internationally, has been growing exponentially virtually all over Europe during the last decade or so. While the industry's ever stronger presence is visible even by laymen, the academia seems not to take adequate attention to the development.

This equally applies also to the European Union, which does not have a clear position on how to balance the tension that exists between the goal of supporting economic activities by making enforcement of judgments and collection of debts more efficient (e.g., 2009 Stockholm Programme) and the protection of consumers. Though admittedly the judgment of the European Court of Justice Case C-134/05 (Commission v. Italy) has managed to demolish the entry barriers before the growing number of international debt collection firms (e.g., *Intrum Justitia, EOS*). The too frequently revamped EU consumer *acquis* is ill-suited to provide adequate protection to consumers as it was not formulated with the industry at sight.

As no guidance is coming from Brussels, the Member States have begun to formulate their regulatory responses that inevitably differ radically one from another. At one end of the spectrum is the United Kingdom with industry specific regulation dating back to the 1974 Consumer Protection Act (as amended in 2006). On the opposite side are systems that have no tailor-made regulations, where thus such collection practices are tolerated that had long become prohibited, for example, in the UK. Especially in the latter jurisdictions is there ample room for horizontal application of human rights given that classical branches of law do not provide protection to consumers and small scale businesses.