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The Influence of Harmonisation of Private Law on the Development of the Civil Law in Hungary

If we want to obtain an accurate picture of the present status of civil law in Hungary as a relatively new member state of the European Union, we should start with the history of the civil law. The historical background can explain to what extent civil law was adaptive at the time of the great economic and social changes of the end of the 1980s and into the early 1990s. The more adaptive a civil law regime was, the less urgent need for instant changes in the law occurred. From this point of view, Hungary was in quite a lucky situation: the old rules, with some modifications, could handle the market economy relationships. However, an overall reform of civil law became inevitable. The reasons for, and the process of, such a reform are described in Section 1.

In 2004, Hungary joined the European Union. As a part of the accession process, the Hungarian legal system was harmonised with the legislation of the EU, and as a member state Hungary develops its law in accordance with the European requirements. The footprints of the *acquis communautaire* are observable in the national private law legislation. In Section 2, a general overview of the impact of the European legislation on Hungarian civil law will be given, describing the role of the *acquis communautaire* in the process of private law reform.

Since the fall of the socialist regime, Hungary has had an open market economy whose legal infrastructure should have been adapted to the general trends in the legal developments of international trade. These trends are more or less reflected in those instruments aiming to harmonise, first of all, contract law. Section 3 of this paper deals with the impact of the Principles of European Contract Law (PECL), UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles), and Common Frame of Reference (CFR) on Hungarian private law legislation.

The main conclusions of the study will be summarised in Section 4.

1. The status of civil law reform

The basic source of private law in Hungary is Act IV of 1959. This act became the first civil code in the country, and until now it has been the only one. Before the civil code was developed, Hungarian civil law was judge-made law strongly influenced by legal customs, traditions, Austrian law, and various drafts of a civil code that were elaborated on from the middle of the 19th century onward. In 1848, the year of the Hungarian bourgeois revolution, the parliament ordered the government to prepare a draft civil code. It could not be a mere coincidence that a revolution aiming to replace a feudalistic regime with a more or less capitalistic social and economic order prompted the question of a civil code that could provide stable, uniform, and safe regulation of relationships under private law. It was an elementary interest of the bourgeois class to have a code that is applicable to everybody, irrespective of the origin of the parties, and to all types and pieces of property. Such a code was deemed to be a prerequisite for the safe turnover of goods and services, as well as for the development of flow of capital through credit institutions.

After the failure of the 1848 revolution, the independent Hungarian codification was struck off the agenda. However, as a consequence of the Hungarian compromise with Austria in 1867, the movement for the codification of Hungarian private law was resumed. From 1871, some partial drafts for a proposed civil code were prepared. Since it turned out that preparing an overall code comprising rules on commercial and non-commercial private law relationships takes a long time, it was decided that a separate commercial code is necessary for responding adequately to the needs of commercial life. The Hungarian Commercial Code was enacted in 1875. It contained regulations on commercial transactions and concerning merchants — including commercial companies — as subjects of such transactions.

However, non-commercial relationships remained unregulated. After the release of some partial drafts, the first consolidated draft for a civil code was completed by 1900. It was developed through a series of professional and political discussions, and new drafts were proposed. The last draft before World War II was dated 1928. Though this draft, too, was never adopted, it served almost as an effective code: the courts used it as a point of reference, and the scholarly literature analysed it thoroughly as a major source of Hungarian private law. This effect can be explained by the fact that the 1928 draft could reflect legal traditions and practice as broadly accepted and followed.

After World War II, Hungary became a part of the political zone influenced by the Soviet Union, and a political, economic, and social regime quite different from a political democracy based on the market economy began to be built. It could be deemed a contradiction that in such circumstances the preparation of a civil code came up again. What is such a code about if the goods are basically in state ownership, if the exchange of goods and services is administered by state agencies, and if state enterprises fulfil only state orders? In spite of the fact that under such conditions a civil code could play only a limited role, it was still needed for regulation of classical civil law institutions — such as property and contracts — which served as a formal framework for the state-organised economy. In addition, a civil code could have been applied also in those relationships where the property rights of individuals or organisations remained in their classical form. However, the domain of such relationships was highly restricted.

It is not a surprise that a civil code whose background is not a classical market economy cannot meet all of the requirements and show all of the typical features of classical codes. What is more surprising is that such a code could survive in the climate of the great economic and social changes that took place in Hungary from the end of the 1980s. How could it happen that a civil code that was in force under the socialist regime remained workable in market economy relationships as well? I think that the flexibility and adaptability of the code came as a compound result of the following factors. As a matter of course, the preparation of the civil code was influenced mainly by legal scholars who had been educated in the previous regime. They respected classical institutions and principles of civil law and tried to preserve them. In strong connection with this, the code was strongly influenced by the pre-WWII drafts, mainly by the 1928 draft. Since these earlier drafts were designed for a market economy, the main elements of such regulation permeated the new code. Finally, the Hungarian Civil Code was viable in spite of the fundamental economic and social changes because such changes did not come to Hungary in a vacuum, without any prior events, and these antecedents were reflected also in legal regulation. The most important factor was that the late 1970s saw a reform of the socialist economic system commence. While the old-fashioned socialist economic system was based on the direct and general decision-making power of state organs, the essence of the reform was to replace the state orders with limited market mechanisms. The state enterprises gained a certain level of independence; they were acknowledged as *quasi*-owners of the properties handled by them; consequently, they had some freedom and flexibility to enter into contractual relationships with each other. Instead of using direct orders to influence the economic sphere, the state relied on normative rules construing incentives for the enterprises. In order to reflect these changes in the Civil Code, the regulation went through an overall modification in 1977. As a result, Hungarian civil law reflected some characteristics of a market economy without the country having a real market. Later, when the state's planned economy was transformed into a market economy, the legal concepts and basic rules of the private law regulation were ready to handle the new relationships properly. Naturally, introduction of extensive amendments was inevitable, but in principle the Civil Code was able to

accommodate such modifications. Therefore, it was not necessary to replace it instantly with a new code. Thus, Hungary could avoid such emergency solutions as reactivation of old laws from the pre-war era or transplantation of a foreign civil code.

Although the above-mentioned factors freed Hungary from the pressure of introducing a new civil code within a short time, in 1998 a government decree ordered the establishment of a 'Codification Committee', whose task was to prepare the draft for a new code. This committee, which included judges, government officials, and academics, published the concept and regulatory syllabus for the new civil code in 2003, after an extensive process of legal, economic, and comparative research. The concept was confirmed by the government, and so development of the language of the draft could start. The first draft of the new civil code and its reasoning had been finalised by the Codification Committee by 2006. After discussions in academic and professional circles and in non-governmental organisations, the Ministry of Justice issued its official version of the draft, which was based on the draft from the Codification Committee, though deviating from it at many points. It is planned that the draft will be discussed by Parliament in 2008, with the draft to be adopted at the end of this year. However, according to plans, the new civil code will come into effect only in 2010.

Which were the most important reasons for starting the codification of a new code? First we have to mention the extremely high number of modifications made to the old civil code.[*1] One may discover a special contradiction in this fact. I mentioned the adaptability of the code as one of its strengths. However, the adaptation could indeed have taken place via a series of modifications. Why, then, did these modifications result in a need for a new code, if they fulfilled the aim of adjusting the code to the changing circumstances? The answer is that the modifications were sporadic, had no general governing idea, and were missing a solid theoretical basis. Most of the amendments were introduced *ad hoc*, as reactions to the emergence of needs for regulation in particular areas of civil law relationships. The lack of coherence made application of the code very difficult, and it did not aid in coherent interpretation of the rules. Exceeding a certain level, these ambiguities could cause harm, eroding the required rule of law and the level of legal security.

Neither did harmonisation of Hungarian private law with European regulation served the coherence of the national legal regulation. The European private law regulation is rather sporadic; it does not constitute a coherent, general system.[*2] The main driving force of the European regulation concerning contract law is consumer protection[*3], which does not belong to the classical institutions of private law; therefore, in as far as implementation takes place through modification of the civil code, it increases the probability of contradictions, ambiguities, and a fragmented character for the code. In addition, implementation inevitably entails reception of foreign or international legal institutions, notions, and concepts that are unfamiliar to the national legal system and local legal traditions[*4] and, by being so, may cause further incoherence.

In summary, the great number of new elements in the Civil Code, deriving from the social and economic changes, on the one hand, and from Hungary's European integration, on the other, resulted in a civil code that reflects and answers all of the new challenges but suffers from incoherence. In such circumstances, the decision for adoption of a new code was very well justified. In the course of preparation of the draft, the need for urgent modifications continued, so the situation became worse. Now there is consensus in professional circles that the Civil Code of today will effectively serve the needs of the economy and will aid in restoration of the rule of law in the area of civil law relationships. However, all of these effects are conditional upon steady work for codification that renders all of the necessary efforts to modernise Hungarian civil law in harmony with the main streams of European legal development. Unfortunately, there are some warning signs that forecast that political bargains with and concessions to various interest groups could ruin the results that should be expected from the new code.

It proceeds from the above that the new codification may not follow a single model of codification. In the 19th and 20th centuries, the historical situation could justify Hungarian civil law legislation based on the Austrian and German model. In the present globalised world, Hungary as a member of the European Union, whose member states have different private law systems but are keen on harmonising their laws, may not feel able to afford to bind itself to a single model and to build its civil law exclusively on the chosen system. Accordingly, the aim of the codification was, rather, to create a civil code based on the then-existing code and national legal traditions but reflecting all of the contemporary challenges. In identification of these challenges and the possible solutions thereto, comparative legal studies helped us to a considerable extent. The 'Concept' of the code declares that the codification shall consider the results of civil law codification or other legal developments in

[1] Though there is no official number available, according to my private statistics the number of amendments is higher than 70 since 1977 when a consolidated text was issued.

[2] See L. Vékás. Európai közösségi fogyasztóvédelmi magánjog (Consumer Protection Law in the European Communities). – L. Vékás (ed.). Európai Közösségi jogi elemek a magyar magán- és kereskedelmi jogban (European Law in Hungarian Private and Commercial Law) Budapest: KJK-Kerszöv 2001. pp. 28–29. The same in German language: L. Vékás. – M. Pachke (Hg.). Europäisches Recht im ungarischen Privat-und Wirtschaftsrecht; Münster: LIT Verlag 2004, pp. 3–4.

[3] *Ibid*.

[4] See G. Benacchio. Az Európai Közösség magánjoga. Polgári jog, kereskedelmi jog (Private Law of European Community. Civil Law, Commercial Law). V. fejezet: A szabályok és modellek áramlása (Chapter V: Flow of Rules and Models). Budapest: Osiris Kiadó 2003. p. 111 *ff*.

other countries and that, after a thorough analysis, some solutions could be adopted from these — yet without any of these national legal systems being taken as a general model. The formal implantation of foreign rules and institutions is definitely rejected. A synthesis of foreign developments could be assisted in a certain sense through the implementation of European legal rules and those international instruments whose aim is the establishment of a uniform contract law regulation. Both European law and international instruments reflect a compromise among the participants, and in this way they can transmit common values and show the broadly accepted main stream of development, which could serve as a reference point for Hungary as well.

2. The role of the *acquis communautaire* in the reform process

Though the domain of private law is quite broad, including, *inter alia*, company law, intellectual property law, financial services, and security law matters, for the purposes of the present paper I limit myself to contract law, because those international instruments that form the subject matter of the analysis are concerned with contract law.

It is well known that new states could join the European Union only if they accepted and implemented the whole of European law, including European private law. In such circumstances, Hungary had no choice of whether or not to adopt European law[*5]; the only question was how it should fulfil the obligation of harmonisation. In general terms, there are two possibilities for implementation of European directives concerning contract law matters. One option is to keep them separate from the existing regulation of contract law and implant mere translations of the European rules into the national legal system, leaving the court to solve any problem arising from any contradictions between the classical contract law regulation and the new body of law coming from the European Union. Such an arrangement has some remarkable advantages. First of all, it is the fastest method of implementation; translating a text takes much less time than is required to analyse it and to prepare an original draft that has the legal effect requested by the directive and, at the same time, fits with the other parts of the national legal system. The speed of the legislation was a crucial element in the accession period. There was a desperate need for joining the European Union as early as possible. It would have been unacceptable to hinder the accession process by raising difficulties concerning coherence of the legal system. Priority was given to fulfilling the obligation of harmonisation as soon as possible, even if such harmonisation were to come at the cost of the unity and coherence of the existing system. Another, not negligible advantage of the mechanical implementation was its security in terms of negotiations with the European Union. It was much easier for Hungary to demonstrate that it had fulfilled its obligation to harmonise its law with the EU requirements with a readily identifiable counterpart (frequently a word-for-word translation) of the European legislation appearing in the national legal system than for the country to explain that certain national legal institutions — sometimes in conjunction with each other, as a set of interrelated rules — could have the same effect as that required by European law.

The other method of harmonisation was to implement the European regulation as an organic constituent of the national legal system. That required not only a translation of the words of directives but also a 'translation' of their meaning. The main feature of this method is its functionalist approach. That means that the national legislator has to analyse and determine the basic function of the European regulation, then identify in the domestic legal system those legal institutions and concepts that are designed for serving same functions and use these existing elements as vehicles of implementation, even if their appearance and formulation is not identical to that of European law. It goes without saying that, with application of this method, the implementation of European law is much slower and causes more ambiguities where the conformity of Hungarian law with that of Europe is concerned. In spite of these disadvantages, I believe that this second way is superior, because a regulation that fits into the whole legal system has its connection with other legal institutions and works with them smoothly. Being so, such a regulation can be applied more effectively.

The methodology of implementation could determine also the source of law in which the European requirements appear. The formal implementation can take place in separate laws in order to avoid contradictions within a single piece of legislation. If the European rules are placed in the existing laws, especially in a civil code that is intended to regulate civil law relationships in general, then its areas of incoherence are much more visible. In a separate body of law, they are remote enough not to demonstrate contradictions with other rules at first sight.

Taking into consideration the above pros and cons, Hungary followed a mixed approach in its implementation of European private law. There are some directives whose implementation was realised by means of amend-

[5] In theory, however, it could be a valid question whether harmonisation of private law is necessary, and if the answer is in affirmative, to what extent. See, e.g., W. van Gerven. Harmonization of Private Law: Do We Need it? – Common Market Law Review 2004 (41) April, pp. 505–532.

ments of the Civil Code, and there are others that were implemented as separate laws. If one looks for some regularity, it could be established that the earlier the date of the legislation the more probably it came about in a separate law. The logic of this trend was that at the beginning of the accession process we had no experience with legal harmonisation; therefore, the safety concern with the regulation was predominant. In addition, at the first stage, when the national legislator faced the problem of implementation of a huge amount of European legislation in a relatively short time, the rapidity of the process had priority over the coherence of the legal system. As Hungary's legal system became more and more in concert with the European law, implementation became less urgent, so the quality of the legislation prevailed over the speediness consideration.

Given some examples[*6], one can observe that the early directives on product liability[*7] or consumer credit[*8] were implemented via separate laws[*9], while the directive on sale of consumer goods and associated guarantees[*10] was implemented by modification of the Civil Code.[*11]

It could happen that not just the national developments (i.e., the increasing amount of experience with implementation of European law) led us to tend toward harmonisation through modification of existing law. It can be argued that the subject matter of the European law is the decisive factor. However, the two statements do not contradict each other. It is obvious that the European legislation on private law matters started from the periphery and approached the core of contract law gradually. Regulation of peripheral questions is easier in separate laws, because these questions are normally left untouched by the classical contract law regulation. When one takes the example of timeshare contracts, it is not surprising that the Civil Code has not offered any regulation for this matter; therefore, it needed no special explanation when implementation of the directive dealing with such contracts[*12] took place via a separate government decree[*13] and not in the Civil Code.

However, in considering the case where the regulation concerned sale contracts, one should not overlook the fact that this type of contract is regulated in the civil code; consequently, any special regulation has some relation to the basic rules, whether it is within or outside the scope of the code. This compels the legislator to think over the relationship of the European law with the national regulation. Once this relationship is addressed, the legislator has no reason to separate the harmonised legislation from the main body of law.

At this point, we can discover a special side effect. In every case of lawmaking, determination of the scope of regulation is a crucial point. The European legislation always seeks to specify clearly the relationships to which it shall be applied. It has great importance especially because the legislative power of the European Union is limited, and it always shall be shown that the given rules fall within the power of European institutions. If European requirements that are valid for only a limited subset of relationships appear in a general domestic law whose scope of application is broader, the implementation can cause an additional effect: it could happen that, as it becomes a part of the national legal system, its effects will be extended to those relationships whose regulation was not originally intended (and perhaps whose regulation was not even allowed) in European law. The case of consumer sales could be mentioned as an example of this phenomenon. Though the relevant directive is aimed at regulating sale contracts that qualify as consumer contracts, the implementation happened through modification of the general law on contracts; thus, the rules implemented are applied to all types of contracts, not only to contracts of sale, and they are applied to contracts between all kinds of parties, not just to parties to consumer contracts. Such a development does not necessarily mean an error. It could be a thoughtful decision of the legislator, and in this case the expansion of the idea of consumer protection could serve the development of the entirety of civil law.

3. The role of the PECL, UNIDROIT Principles, and similar instruments in the reform process

In the course of preparation of the new Hungarian Civil Code, it was a broadly accepted and expressed goal to have a code in keeping with the main trends in the development of civil law in Europe as well as in the world more generally. In order to reach this end, an extensive process of comparative research has been carried out. In addition, the Codification Committee has studied thoroughly those international instruments that reflect the

6 For a complete overview of implementation of consumer protection directives see L. Vékás (Note 2).

7 Directive 85/374/EEC. – OJ L 210, 7.08.1985, pp. 29–33.

8 Directive 87/102/EEC. – OJ L 278, 11.10.1988, pp. 33.

9 Act No. X of 1993 on Product Liability; § 7 of Act No. CLV. of 1997 on Consumer Protection and §§ 212–214 of Act No. CXII of 1996 on Financial Institutions.

10 Directive 1999/44/EC. – OJ L 171, 7.07.1999, pp. 12–16.

11 §§ 305–311/A of the Hungarian Civil Code.

12 Directive 94/47/EC. – OJ L 280, 29.10.1994, pp. 83–87.

13 Government Decree No. 20/1999. (II. 5.).

synthesis of current developments in private law. It was expressly stated in the 'Concept' of the new Civil Code document that in the sphere of contract law the drafters should take into consideration the solutions offered by the PECL and UNIDROIT Principles*[14], and that, at those points where such a solution fits the system of Hungarian regulation, rules from the international instruments can be used as a model. This does not mean that Hungary has bound itself to implement these instruments in their entirety in domestic civil law, but it does mean that we think it important to have a civil code that is familiar and acceptable in the international arena and in purely domestic relationships.

In spite of this intention, one should note that not all of the similarities can be treated as results of implementation of rules from international instruments. A number of corresponding rules can be explained by the fact that these rules constitute a part of the common legal culture. Since Hungary has a private law regulation with its origin in the common cores of the civil law traditions, many elements of the PECL or UNIDROIT Principles could have been found in Hungarian law before the emergence of these international rules. As inherent constituents of the national law, these rules should not have been implemented; they simply had to be preserved in the course of the codification.

On the basis of the above, it would be impossible to enumerate all of the places in which the Civil Code draft is identical or similar to the international instruments. It would be similarly hopeless to list those elements that are expressly correlated with one or the other international set of contract law principles. It seems to me more instructive to cite just a few examples of how the PECL and/or UNIDROIT Principles could influence the draft for the new civil code.

My first example concerns the contents of a contract. This subject is dealt with in the 'General Part' of the law of obligations. The current civil code says that the contents of a contract come from two sources: firstly, from the agreement of the parties and, secondly, from the default rules of the code. It is understandable that without regular business relationships it was not necessary to address the problem of how business usage and practices might influence the contents of a contract. However, with market relationships this question cannot be evaded. The draft Civil Code prepared by the Codification Committee provides as follows.

> A contract will include as a part of its content:
>
> – usage that was applied in the business relationship of the parties prior to the conclusion of the contract;
> – the practice they established between themselves prior to the conclusion of the contract; and
> – usage that is generally applied by persons in a position similar to that of the contracting parties, except in the case when the application of such a usage would be unjustifiable when one takes into account, in addition to other elements, the former business relationships of the parties.
>
> Usage is a generally applied procedure and business behaviour that is accepted by the participants of the trade or a certain branch of the trade.
>
> Practice is any procedure established and regularly applied by the parties.

It does not cause any difficulty to identify the models of this proposed rule. It is practically identical to the relevant PECL rule.*[15] Furthermore, similar regulation can be found in the Vienna Convention on International Sale of Goods (CISG)*[16], which is also cited as a model for the draft, and the UNIDROIT Principles*[17] material has a provision very similar to that of the CISG. It is quite clear that, if all relevant international instruments deal with the role of usage and practices, then a new civil code cannot be silent on this question.

A second example is related to the merger clause that is frequently used in contractual practice but it is subject to no legal regulation. Such a situation causes not only a feeling of something being wanting but also a problem for the courts when they have to resolve disputes connected with merger clauses. The draft of the Hungarian Civil Code as prepared by the Codification Committee offers the following solution:

> If a written contract contains a clause indicating that the writing completely embodies the terms on which the parties have agreed, the prior agreements of the parties become ineffective.
>
> Former statements shall not be used to interpret the writing.

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[14] The Conception and Regulatory Syllabus of the new Civil Code is available on the Internet as of 17 March 2008 at http://www.irm.hu/?mi=1&katid=193&id=217&cikkid=3309. The said document states: "In addition to the national codices, the reform of the Civil Code also derives from international legislative achievements. First and foremost among these, the Vienna Sales Convention provides models that can be followed; other than that, the contract law chapters rely in several places on the UNIDROIT Principles of International Commercial Contracts (1994) and The Principles of European Contract Law (I–II: 1999, III: 2002). These latter model law drafts have received considerable professional recognition throughout the world and have broadly influenced both legislation and legal practice." (Introduction A/I/2.) There was no reference to the CFR, because at the time of accepting the Concept of the Code, CFR had not been completed yet. However, at the final stage of drafting the Code also CFR was taken into consideration, though this cannot be documented.

[15] Article 1:105. This rule is repeated in CFR II.–1:104.

[16] Article 9.

[17] Article 1.9.

Here, again the models can be discovered without difficulties. All of the international instruments have some provision concerning the matter.*[18] However, the Hungarian draft shows some divergence from the models. Comparing this with the PECL and CFR material, one finds it striking that the draft does not draw a distinction between individually and not individually negotiated merger clauses. In this respect, it is closer to the UNIDROIT Principles, which also omit this differentiation. But the draft contradicts both sets of principles in connection with the interpretation rule. While the UNIDROIT Principles and PECL provide that parties' prior statements may be used in interpretation of a contract, the Hungarian draft excludes this possibility, and, unfortunately, it does not offer any reason for such a divergence. This contradiction is more serious when considered in the light of the fact that, according to the PECL and CFR, opting out of the interpretation rule cannot be deemed valid in contracts that are not individually negotiated.

In comparison of the proposed Hungarian legislation with international instruments, a further question arises. How can these instruments be used as models if they are not identical to each other in key respects? The UNIDROIT Principles are designed for international contracts, while the PECL and CFR have broader scope, as they are intended to be applied in domestic contracts as well. Furthermore, the UNIDROIT Principles deal with commercial contracts only, unlike the PECL and CFR, which regulate commercial and non-commercial contracts as well. These differences are more than theoretical. Perhaps the most obvious consequence is that the UNIDROIT Principles do not contain rules on consumer protection, because consumer contracts fall outside the scope of the regulation. However, the difference runs deeper: the general view of the participants of contractual relationships could be different, as is reflected in the standards of behaviour. It is true that the general standard is formulated similarly:

> Each party must act in accordance with good faith and fair dealing.*[19]

However, in relation to specific issues, some differences can be observed that show the difference in approach. For cases of mistake, fraud, or gross disparity/excessive benefit, the UNIDROIT Principles use the standard of "reasonable commercial standards of fair dealing", while the Principles of European Contract Law apply the standard of "good faith and fair dealing".

How could these different approaches have been handled in the course of codification? First of all, we should note that the planned Hungarian Civil Code is a uniform code in the sense that it does not differentiate between commercial and non-commercial relationships or contracts.*[20] Furthermore, the code is designed for domestic and international use as well. It could be treated as an exception that a separate body of law governs international sale of goods. Normally, the rules of the code are applied in international relationships, provided that the norms of international private law prescribe the application of Hungarian law.

As a consequence, the code is open for adaptation of models from the UNIDROIT Principles, PECL, and CFR equally. In case of differences between these instruments, it could be decided on a case-by-case basis which one shall prevail. Even a mixture of the models is theoretically imaginable.

4. Conclusions

The present situation of the Hungarian civil law is characterised by the preparation of the new civil code. The new code shall conclude an adaptation process through which the legal institutions and behavioural rules of a market economy have become inherent parts of the legal system. This transition was strongly influenced by the need for legal harmonisation with the law of the European Communities. Implementation of European rules had double effect. On the one hand, it helped with the development by transmitting broadly accepted legal concepts and rules that were in conformity with the requirements of a market economy. On the other hand, reception of European law — which was fragmented and did not in itself constitute a comprehensive and coherent system — increased the incoherence of Hungarian law. The problems of incoherence spurred on efforts for the elaboration of the new Civil Code.

In the course of preparation of the new code, the drafters knowingly took into consideration not only the requirements of European law but also those international instruments aimed at international harmonisation of contract law. The new civil code draft utilises all concepts, institutions, and rules of these instruments that fit into the system of the code and the Hungarian legal system as a whole. By so doing, the code may be of better quality and may be able to count on international acknowledgement.

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[18] UNIDROIT Principles article 2.1.17, PECL article 2:105, CFR II.–4.104.

[19] UNIDROIT Principles article 1.7, PECL article 1:201, CFR.

[20] See L. Vékás. Az új Polgári Törvénykönyv elméleti előkérdései (Preliminary Theoretical Questions of the New Civil Code). Budapest: HVG-Orac 2001, Chapter 2.