

## Party Autonomy: Removing Obstacles to Legal Diversity in the European Market\*

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ABSTRACT: One of the main obstacles to the internal market is legal diversity: Member States often adopt different legal standards not only within public and economic law but also with regard to private law. The traditional approach of European Institutions (harmonising legislation among Member States) was soon complemented by the principle of mutual recognition; these two methodologies embodied the European strategy for minimising the problem. However, a third European tool is becoming obvious: to give private parties the ability to choose the applicable law.

This *new approach* enhances regulatory competition among Member States and turns unessential the unification of national rules, which suits best the proportionality principle. Party autonomy as a means for overcoming the difficulties of legal diversity is not only a reality in European statutory law – which already brought the ability for choosing the applicable law to contracts, torts, divorce, inheritance, alimony, matrimonial property – but is also highlighted in ECJ’s case-law, which declared legal diversity is not a barrier to the basic freedoms as long as parties may choose the applicable rules.

The article will focus on the grounds and advantages of this method to address the issue of legal diversity, advocating its use in areas where the traditional approach is ineffective or impossible (such as some rights *in rem*, within the scope of the freedom of movement of capital).

KEYWORDS: Party autonomy; Internal market; Conflict of laws; Legal diversity; free movement

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